IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.185/Nag./2025
(Assessment Year : 2017–18)

Shri Rupesh Laldas Dhakate
Flat no.001, Plot no.545/546
Umred Road, Chitnis Nagar ……. Appellant
Bada Taj Bagh, Ayodhya Nagar
Nagpur 440 025 PAN – BEQPD1191E

v/s

Income Tax Officer
Ward–1, Bhandara ..... Respondent

Assessee by : Shri Chandraprakash Bhutada
Revenue by : Shri Surjit Kumar Saha

Date of Hearing – 14/04/2025	Date of Order – 27/05/2025

O R D E R

The aforesaid appeal filed by the assessee is against the impugned order dated 20/01/2025, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017–18.

2. In its appeal, the assessee has raised following grounds:–

"1. That on facts and circumstances of the case, the order passed by the Assessing officer u/s 147 is invalid and bad in law,

2. That the income determined by the assessing officer of Rs 29,28,420/- is unjustified, unwarranted.

3. That the learned Assessing Officer must conform to rules of justice, equity and good conscience and cannot be arbitrary and capricious even while making a Demand u/s 156 is invalid and bad in law.

4. The demand was raised under the assumption that appellant has purchase the property located during the relevant period and failed to report the source of funds for the same. However, we wish to clarify that the source of funds for the purchase of this property originated entirely from his father's retirement benefits, which he received from his long-standing service at Ordinance Factory Bhandara as a Charge man grade-1. Upon retirement, he was entitled to a substantial sum, including his provident fund balance, gratuity, pension, and other retirement savings, all of which were received on his retirement.

5. Subsequently, these funds were utilized to acquire the immovable property in question. The transaction was conducted through a regular bank transfer, and all applicable tax obligations on his father's retirement benefits were duly fulfilled as per the provisions of the Income Tax Act, 1961.

6. Undisputedly the entire addition in this case has been made by the Assessing Officer under section 69 of the Income Tax Act 1961.

7. Section 69 of the Income Tax Act deals with "Unexplained Investments." It presumes that if an assessee makes an investment in any asset, and the source of that investment is unexplained or not satisfactorily explained, then the amount of such investment will be treated as the income of the assessee for the relevant assessment year. However, in this case, there is a clear and documented source of the funds used to purchase the immovable property. Therefore, there is no question of treating these funds as unexplained income under Section 69.

8. Legal Submissions and Provisions of the Income Tax Act, 1961:

A) The provisions of Section 69 are invoked when the source of an investment cannot be explained satisfactorily by the taxpayer. However, the following legal points must be considered:

The funds utilized for the purchase of the immovable property in question were legitimate retirement savings of the appellant's father, accumulated from his long-term employment.

To further clarify, his father's retirement benefits funds are clearly documented and, in most cases, exempt from tax or taxed at concessional rates under the provisions of the Income Tax Act 1961. These were not "unexplained" funds but rather legitimate savings built over years of employment. Several retirement-related receipts are specifically exempted from tax or treated as non-taxable under the Act.

As the funds in question come from these legally permissible sources (i.e.. retirement funds), it cannot be said that these funds represent unexplained income under Section 69.

B) Section 50C (1) of the Income Tax Act 1961, where the consideration received or accruing as a result of the transfer by an assessee of a capital

asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer:

CIT v. R. R. Estates Pvt. Ltd. (2014) (Madras High Court)

Facts: In this case, the Madras High Court dealt with the issue of whether the payment made and the agreement executed for the sale of property before the formal registration should be considered for capital gains taxation under Section 50C of the Income Tax Act.

Ruling: The court observed that the execution of the agreement and payment made before the registration date can be considered for the purpose of determining the sale price. The case involved situations where agreements to

sell were executed, and payments were made before the actual registration of the sale deed.

Key Point: The Madras High Court held that where the agreement to sell and the payment had already been made, and there was a clear intention to transfer ownership, the date of the agreement could have relevance in determining the transfer for taxation purposes.

C) As per Section 56(2)(vii) of the Income Tax Act, gifts received by an individual are generally taxable under the head "Income from Other Sources," if the total value of gifts received in a financial year exceeds ₹50,000. However, there is a specific exemption for gifts received from relatives.

Gift from Relatives - As per Section 56(2)(vii), gifts received from relatives are exempt from tax, irrespective of the value of the gift. This exemption applies even if the value of the gift exceeds ₹50,000.

CIT v. Smt. Pradeep Kaur (2004) 265 ITR 91 (Punj. & Har. HC) The Punjab and Haryana High Court in this case ruled that gifts received from a father by his son are exempt from tax under Section 56(2)(vii), regardless of the value. The court observed that the relationship of father and son clearly falls under

the category of relatives as defined in the section, and therefore, the gifts were not taxable.

CIT v. Sudhir Kumar (2012) 348 ITR 475 (Delhi HC) In this case, the Delhi High Court held that any gift received from a relative, such as a father, is exempt from tax irrespective of the value of the gift. The court noted that as per Section 56(2)(vii)(c), a lineal ascendant (father) is treated as a relative, and therefore, gifts received from a father, even if they exceed ₹50,000, will not be taxable.

9. We now respectfully draw your attention to several judicial precedents, which clarify the applicability of Section 69 and support to this case:

CIT v. Smt. S. Anitha (2002) 254 ITR 453 (Madras HC): The Madras High Court held that if the investment in an asset is made from known sources such as savings, gifts, or income that has been subject to tax, it cannot be considered unexplained under Section 69. In this case, the court ruled that the funds in question (derived from regular income) were not unexp unexplained.

CIT v. D. N. Kamani (2015) 373 ITR 474 (Bombay HC): The Bombay High Court held that if funds are sourced from legal and disclosed income, then such investments cannot be considered as unexplained under Section 69. The court emphasized that retirement benefits, which are well documented, fall into this category.

10. In light of the above legal submissions, facts, and case laws, we respectfully submit that the demand raised is unjustified. The funds used for the purchase of the immovable property are from appellant's father's legitimate and documented retirement savings. Hence these funds cannot be considered unexplained investments under Section 69, and therefore, the demand raised should be dropped.

11. To substantiate the claim, we are enclosing the following documents for verification:

i) Copy of Bank Passbook reflecting credit of retirement fund in the bank account and Payment to the vendor.

ii) Property Purchase Documents, including:

a) Sale Agreement

b) Registered Sale Deed

iii) Copy of Appeal order dated 25/01/2025 filed before CIT(A).

These documents establish the legitimate source of funds and confirm that the property purchase was made using a valid source, leaving no scope for any undisclosed income.

12. Should you require any additional documentation or clarification, we are happy to provide the same.

13. We kindly request you to reconsider the matter and issue an appropriate order in this regard.

14. Thank you for your understanding and cooperation

Any other ground shall be prayed at the time of hearing"

3. The reason for selection of case and type of case and background facts as culled out from Page–1 & 2 of the assessment order are narrated infra:–

"The assessee has not filed his original return of income u/s 139(1) of the IT Act for the assessment year under consideration. However, the assessee has filed an invalid return of income for the A.Y. 2017-18 on 29/07/2021 declaring gross total income from salary of Rs.3,15,890/-, claiming Chapter-VIA deductions of Rs.66,785/- and showing total income at Rs.2,49,110/-

As per the information available on record, the assessee had purchased an immovable property vide a Sale Deed No. 8585 dated 25.10.2016 for consideration mentioned in sale deed at Rs. 16,71,000/-however, the Stamp Duty Value of the said property is Rs.25,53,000/-. The assesse had not filed his return of income for the year under consideration and has not offered the difference of Rs.8,82,000/-as income from other sources as per provision of sec 56(2)(vii) (b) of the Income Tax Act, 1961 and therefore the income from other sources had escaped assessment for the AY 2017-18. In view of above information available on record, notice u/s 148 of Income Tax Act, 1961 was issued to the assessee originally on 30.06.2021.

Several Writ Petitions were filed by certain assessees before the various Hon'ble High Court as well as other courts, challenging the validity of the said notice u/s 148 of the Act. The various Hon'ble High Courts decided the writ petitions. Thereafter, matter reached before Hon'ble Supreme Court. The Hon'ble Supreme Court of India in Civil Appeal No.3005/2022 in the case of Union of India & ors Vs. Ashish Agarwal and others dated 04-05-2022, has directed that all the notices issued u/s 148 of the Income Tax Act, 1961 between 01.04.2021 to 30.06.2021 is deemed to have been issued u/s 148A of the Act as mandated by the Finance Act 2021 and shall be treated as show cause notice as per section 148A(b) of the Act and directed to provide the information and material relied upon by the revenue to the assessee for issue of such notice, within 30 days from the date of order passed by Hon'ble Supreme Court of India i.e. 04-05-2022 and to provide two weeks' time to file the reply by the respective assessee to the AO and thereafter to pass the order u/s 148A(d) by the concerned AO to decide whether it is fit case for issue of notice u/s 148 or not.

Following the above directive of the Hon'ble Supreme Court and in accordance with the CBDT's Instruction No. 01/2022 dated 11.05.2022, the said notice u/s, 148 dated 30.06.2021 was treated as show cause notice u/s 148A(b) of the IT Act and the underlying material and information on which the show cause notice u/s 148A(b) is based was provided to the assessee vide letter dated 31.05.2022, asking the assessee to submit response within two weeks

(fourteen days) from the date of receipt of the notice to show-cause in accordance with section 148A(b) as to why notice u/s 148 should not be issued with reference to the information as provided. However, no response was received from the assessee.

Considering no response from the assessee and considering the material available on record and with prior approval of the competent authority, order u/s 148A(d) of the IT Act was passed on 22.07.2022 deciding that it is a fit case for issue of notice u/s 148 of IT Act."

4. The alleged escaped income is below ₹ 50 lakh and notice for re–opening the assessment was issued more than three years after relevant assessment year under section 149(1)(b) of the Act provides for longer period of limitation of 10 years from the end of the relevant assessment year.

"Section 149(1)(b) as it presently stands provides for a longer period of limitation of 10 years from the end of the relevant AY. However, the same is subject to fulfilment of the following conditions-

The Assessing Officer has in his possession books of account or other documents or evidence;

Such books of account or other documents or evidence reveal that the income chargeable to tax has escaped assessment;

Such books of account or other documents or evidence reveal that income chargeable to tax has escaped assessment is represented in the form of

(i) an asset; [as per section 149(1)(b) by Finance Act 2021]

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or [as per amended section 149(1)(b) by Finance Act 2022]

(iii) an entry or entries in the books of account, [as per amended section 149(1)(b) by Finance Act 2022]

The amount of such income chargeable to tax that has escaped assessment is fifty lakh rupees or more;

It may be noted that all the above elements viz., possession of materials, such materials

revealing that income has escaped assessment, materials further revealing that escaped income is represented in the particular form and such escaped income amounting to 50 lakhs or more, need to be established by the Assessing Officer in every case falling within the ambit of section 149(1)(b).

The above safeguard was brought in to ensure that re-assessment beyond 3 years is initiated only in exceptional cases. In this regard, reliance may be placed on the following:

- *Para 154 of Finance Minister's Speech, during Budget 2021-22;*
- *Memorandum explaining the provisions of the Finance Bill, 2021;*
- *Union of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC) (para 6.6);*
- *INSTRUCTION F. NO. 225/135/2021/ITA-II, DATED 10-12-2021 (para 5);*
- *Sumit Jagdishchandra Agrawal vs. DCIT [2023] 455 ITR 216 (Gujarat) (para 5.2.2);*
- *IDFC Ltd. vs. DCIT [2023] 459 ITR 169 (Madras).”*

5. In the instant case, the aggregage amount of escaped income, if any, is ₹ 25,53,000, which is below the threshold limit of ₹ 50 lakh. The notice under section 148 of the Act is unsustainable and lacks jurisdiction. Ex–consequenti, the assessment order is quashed and the entire addition is directed to be deleted since the assessee has succeeded on the legal issue. Other grounds have become academic in nature.

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

Order pronounced in the open Court on 27/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 27/05/2025

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Nagpur; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur