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TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

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BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

vk;dj vihy l-a@ITA. No. 334/JP/2023  
fu/kZkj.k o"KZ@Assessment Years : 2011-12

Smt. Rajkumari Gupta 167, Shiv Vihar, Opp-Road No. 5, VKI Area, Jaipur	cuke Vs.	Income Tax Officer, Ward 4(2), Jaipur
LFkk;h y[skk l-a@thvkbvZkj l-a@PAN/ GIR No.: ABOPG 2002 R		
vihykFkhZ@Appellant		izR;FkhZ@Respondent

fu/kZkfjrh dh vkjs l@s Assessee by : Shri P. C. Jain (CA)  
jktLo dh vkjs ls@ Revenue by : Smt. Monisha Choudhary (Addl. CIT)

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lquokbZ dh rkjh[k@ Date of Hearing : 13/09/2023  
mn?kk"sk.kk dh rkjh[k@Date of Pronouncement :  
21/09/2023 vk'n'sk@ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 29/03/2023 [here in after (NFAC)/ Id. CIT(A) ] for assessment year 2011-12 which in turn arise from the order dated 11.12.2018 passed under section 147 r.w.s 143(3) of the Income Tax Act, by

ITO, Ward-4(2), Jaipur.

2. The assessee has marched this appeal on the following grounds:-

*“1. That the learned commissioner of income tax has erred in not mentioning any detail comment on reopening of assessment. Profit from sale of property was already shown by us in return of income therefore there was no tax evasion. The reopening of case u/s 147 was totally invalid and bad in law*

*2. That the learned cit(a) has erred in maintaining addition of Rs.472780/- as capital gain. We have already shown business income of Rs.25000/-. Section 50c was not applicable in our case because sale/purchase was in the name of khandelwal steel traders therefore profit was business income which was already shown by us in return of income kindly therefore delete the addition of Rs.472780/- on account of capital gain*

*3. That the learned cit(a) has erred in confirming adhoc addition of Rs.500000/- on account of business income. We request please to delete the addition of Rs.500000/- on account of business income.*

*4. That the assessee reserve his right to add alter or delete any ground of appeal on or before the date of hearing.”*

3. The fact as culled out from the records is that the assessee filed return of income on 31.03.2013 declaring total income at Rs. 5,19,200/- which was processed u/s 143(1). It was noticed that the assessee had sold an immovable property situated at 601, Pratap Nagar Extn. Vaidh Ji Ka Choraha Murlipura Scheme Jaipur for a consideration of Rs. 16,50,000/- which was valued at Rs. 20,97,780/- by the stamp valuation authority. The Id. AO was of the view that the assessee had not declared capital gain on the transfer of the above-mentioned property. Therefore, after recording reasons and taking

prior approval for opening of case u/s 147 from the Pr. Commissioner of Income-tax-2, Jaipur, notice u/s 148 was issued to the assessee on 26.03.2018. However, no return of income was filed in compliance to the notice u/s 148 within the stipulated time. Therefore, notices dated 31.05.2018 and dated 03.07.2018 were also issued requesting the assessee to file return of income in compliance to the notice issued u/s 148 dated 26.03.2018. Shri. P. C. Jain, CA and A.R. of the assessee filed a copy of Acknowledgement (ITR-V) of return of income e-filed on 04.09.2018 along with computation of income on 11.09.2018 declaring total income at Rs. 5,19,200/- and sought copy of reasons for initiating of proceedings u/s 147 of the Income Tax Act, 1961. A copy of recorded reasons was provided to the assessee on the same date day i.e. 11.09.2018. Since, no objection was filed by the assessee till 14.10.2018 therefore, assuming that the assessee has no objection on initiating proceedings u/s 147, the assessment proceedings were proceeded and notice u/s 143(2) and 142(1) along with a questionnaire and the assessee was requested to file, among other information, necessary documentary evidence in respect of the sale and cost of the property.

3.1 As already known that during the year under consideration, the assessee had sold a property (land) situated at 601, Pratap Nagar, Extn. Vaidhji Ka Chauraha, Opp. VKI Road No. 5, Mahapura aka Kukarkheda, Murlipura Scheme, Jaipur to Sh.

Praveen Sharma and Ms. Premila Sharma for a consideration of Rs. 16.50 lacs. The property was assessed at Rs. 20,97,780/- by stamp valuation authority. Therefore, considering the provisions of sec. 50C, the full value of consideration u/s 48 is to be considered

at Rs. 20,97,780/-, No evidence in support of cost of acquisition/improvement have been filed by the assessee. However, on perusal of purchase/sale deed dated 30.09.2010, it is noticed that assessee had purchased the above property for Rs. 16,25,000/-. Therefore, the cost of acquisition is Rs. 16,25,000/-. The assessee has submitted that she had purchased the same as business assets for doing sale and purchase of business of property and it was not for investment purpose therefore provision of section 50C is not applicable.

3.2 The assessee in her return of income filed u/s 139 had shown the income of Rs. 25,000/- on such transfer of property under the

head "Income from other Sources". On this issue the Id. AO noted as under

However, the assessee, in return of income filed in compliance to notice u/s 148, has reported the sale of the property in question and its profit under Point No. 51 of Part-A P&L the description of which read as

"In a case where regular books of account of business or profession are not maintained, furnish the following information for previous year 2010-11 in respect of business or profession".

Therefore, if the assessee had actually considered this transaction as business, she could have shown the same as business income in return of income filed u/s 139. Therefore, the change of stance of the assessee clearly says it all.

In view of above facts short term capital gain for an amount of Rs. 4,72,780/- was made as income of the assessee u/s. 50C of the Act.

3.3 During the year under consideration, assessee has declared Gross Profit of Rs. 13,58,176/- from the total turnover of Rs. 4,88,05,517/-. The assessee, vide notice u/s 142(1) dated 14.10.2018 was asked to produce books of accounts with vouchers to verify her business income but assessee has not furnished the same on the given date. Therefore, vide show cause notice dated 01.11.2018 assessee was requested to explain as to why provision of section

145(3) may not be invoked in her case and lump sum addition of Rs. 5.00 lacs may not be made in her business income.

In reply of which, the A/R of the assessee has just furnished his audit report on 12.11.2018.

3.4 The assessee neither filed reply on this issue nor furnish books of accounts for examination on 10.12.2018. It shows that the assessee has no explanation on the above issue. Moreover, audit report furnished by the assessee has been examined. Against column 28(a) (meant for opening stock, closing stock, shortage/excess etc) of Form 3CD, it is mentioned that 'As per Annexure 4' but there is no annexure enclosed with audit report furnished by the assessee. Therefore, it shows that the assessee has not maintained any stock/quantitative details which are the most important aspects to arrive at correct income of the business concern. Moreover, in the absence of books of accounts trading results are not subject to verification. Thus, this office left with no other option but to just estimate the profit of the assessee. Therefore, trading results of the assessee is not accepted, and provision of section 145(3) invoked and trading addition of lump sum addition of Rs. 5,00,000/- made in the case of assessee.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised even before Id. CIT(A)/NFAC, the relevant finding of the Id. CIT(A)/NFAC on the issue noted as under:-

“5. Decision: In this case, the case was reopened u/s 148 of the Income Tax Act after taking prior approval of the Principal Commissioner of Income Tax. The case was reopened on the ground that the appellant has sold the property at Rs. 16,50,000/- while as per stamp valuation authority it was valued at Rs. 20,97,780/-.

5.1 The Assessing Officer initiated proceedings u/s.148 of the Income Tax Act. During the course of the scrutiny, ledger, books of accounts, corroborating the sale of property were not filed. The appellant explained that it has shown the income of the sale of property as Income from other sources. The appellant has mentioned that Rs.25,000/- was shown. However, no evidence to support the claim was filed. Hence, the Assessing Officer was correct in adding Rs.4,72,780/- as difference in sale price as per stamp value authority. The addition of the Assessing Officer on this ground is confirmed.

6. Second addition is the addition of Rs.5,00,000/- on account of non production of the Books of Account before the Assessing Officer. The Assessing Officer invoked the provisions of Section 145(3) and made the addition. No details have been filed before me. Hence, this addition is also confirmed.

7. The Assessing Officer has not given appellant the deduction under Chapter VI-A worth Rs.65,584/- as no details have been filed. The Assessing Officer to give the deduction after taking relevant proofs from the appellant regarding Medclaim Life Insurance Premium and Tuition Fees. Hence, the Assessing Officer is directed to allow the claim of deduction after due verification. For statistical purpose, this ground of appeal is allowed.”

5. As the assessee did not receive any favour from the order of Id. CIT(A), the present appeal is filed by the assessee on the grounds as

stated herein above in para 2. Apropos to the grounds so raised, the

Id. AR of the assessee submitted the following written submission:-

"With regard to our appeal for the ass. Year 2011-12 we submit as under: -  
"1. That the learned commissioner of income tax (appeals) has erred in not considering our objection that reopening of case is totally wrong. We have already shown the profit from sale/purchase of property in business income and copy of return and all other documents were submitted before the CIT(A) even after that CIT (A) has mentioned that no evidence to claim was filed. All the document of purchase/sale was in the name of KHANDELWAL STEEL TRADERS and all the payment for purchase was made in the name of Khandelwal steel traders. All purchase/sale document in registrar office was in the name of Khandelwal steel traders therefore profit of Rs.25000/- was of business income and it was shown as business income in the return of income. It does not mean that a single transaction could not be a business transaction. Basis taken by AO for reopening of case is that no return filed. we have already filed the return on 31-03-2013 and we already shown the income for which case was reopened. Basis taken for reopening of case is of section 50C. "under the facts and circumstances of the case the proceedings initiated u/s 148 of the income tax act, 1961 is void ab-initio deserve to be quashed because the action has been taken on the basis of the provisions of section 50c of the IT act"

Provision of section 50 C is deemed provision and does not show any real income. Merely valuation on the basis of payment of stamp duty the same cannot be a basis to conclude that the assessee's income has escaped assessment particularly when no tangible material has been brought on record to suggest escapement of income. There has to be a nexus between the formation of belief and escapement income merely because the stamp valuation authority has adopted a certain valuation for payment of stamp duty the same cannot be a basis to conclude escapement of income particularly no tangible material has been brought on record to suggest the escapement of income. without escapement of real income provisions of 148 is not applicable. We have purchased and sold the property in the name of KHANDELWAL STEEL TRADERS Purchased/sale of the property was for business purposes for which section 50C was not applicable. Section 147 of income tax act deals with provisions of income escaping assessment. The grounds of reasons which lead to formation of the belief that income chargeable to tax has escaped assessment must have a material bearing on the question of escapement of income from assessment because of his failure or omission to disclose fully and truly all material facts. In this matter we rely on the decision of Jaipur bench in the case of Arjun Kumar Choudhary vs. income tax officer ward Tonk vide Appeal no 268/JP/2015. We have already disclosed the income for which notice was issued. We have shown the sale and purchase of property as business income on the basis of not maintenance of books of account It



was not included in audited books of account of iron and steel. The learned CIT(A) did not apply his mind on issue of reopening of assessment without referring to reasons recorded by AO for reopening of assessment contrary to provisions of section 151 of the income tax act 1961. There is no proper approval and it was mechanical approval without application of mind of the sanctioning authority to the reasons recorded for reopening of assessment. It can be safely concluded that the concerned authority has accorded approval in a mechanical manner contrary to scheme of provisions of section 151 of the income tax act. The upper authorities have approved the reopening without any detailed comment how it was correct. JOINT CIT RANGE JAIPUR HAS MENTIONED "recommended" We have shown profit of Rs.25000/- from sale of property as business income therefore section 50C is not applicable. The notice of reopening was served on 5-04-2018 it was time barred because it was beyond limitation period therefore reopening proceedings are totally invalid kindly therefore cancel the reopening proceedings. There was no escapement of income therefore reopening is totally wrong and requires to be Quashed.

2. That the learned CIT (A) has erred in confirming the addition of Rs.472780/- on account of capital gain. We already submitted that profit from sale/purchase of property was already shown by us in return of income as business income of Rs.25000/- no further addition should be made on this account. Sale/purchase was made in the name of KHANDELWAL STEEL TRADERS therefore profit was shown as business income. We have filed copy of return, purchase/sale deed but CIT (A) has ignored these documents and has mentioned that no evidence filed in support of claim. The learned CIT (A) has not seen the documents and has maintain the addition ignoring the document filed by us. The matter of 50C is not applicable on us because property was purchased/sold as business property therefore section 50C is not applicable. The profit which was earned by us was fully shown by us in return of income. The solitary reason taken note by AO is not exist therefore there is no question of making any addition. Further we submit that once the income which was proposed to be assessed as par reasons recorded by AO is found declared in the return of income therefore AO ceased to have jurisdiction to proceed with reassessment proceeding to assess income, we therefore request please to delete the addition of Rs.472780/- out of assessed income.

3. That the learned CIT (A) has erred in maintaining the ad-hock addition of Rs.500000/- on account of business income. The learned AO is wrong in mentioning in para 3b on page 5 of assessment order that we have not submitted Trading, P&I account and balance sheet while in para 3c of page 3 agree that we have filed return of income and audited books of account. The addition was made on adhoc basis without any merits. The reopening proceedings were initiated on the premise that profit from sale/purchase of property was not shown in return of income but same income was shown in return of income. In the absence of any new tangible material or information making roving or fishing inquiries could not unearth completely new grounds calling further information from the assessee which had

already attained finality by way of acceptance of original return. There was no iota of evidence on record to suggest escapement of income of that item. Therefore, the assessing officer has exceeded his jurisdiction. In terms of explanation 3 to section 147 reason to believe was required to be fulfilled before resorting to reassessment proceedings. Hence the assessing officer was not right in assuming jurisdiction with respect to independent and unconnected item without any tangible material or information suggesting escapement of income Which was the basic requirement of section 147. As we have already shown the income for which case was reopened. The AO has failed to acquire a valid jurisdiction to make any addition for other income chargeable to tax which has escaped assessment. Since the solitary reasons taken note of by the AO non-existent therefore there is no question of making any other addition. The income in respect of which AO has reason to believe that the income has escape assessment then he can make addition for that income but without full proof of escapement of income no addition could be made. No further notice issued u/s 148 for addition of other income. -The addition of Rs.500000/-on ad-hock basis is without any merits and without any proof of escapement of income, our books of account already audited by a chartered accountant and sufficient reasons should be recorded for rejection of our audited records. AO has no sufficient reason for rejection of our books account. purchase/sales are fully supported by bills and return of R vat and freight expenses are fully supported by transport bilty, rent is fully supported by rent receipt salary is not looking to volume of business and fully supported by receipts and interest is paid as per loan taken by us by account payee cheque and fully supported with TDS return. All the expenses are fully reasonable therefore ad hoc addition Rs.500000/-is totally wrong. AO has no reason to believe that such income has escaped assessment. We therefore request please to delete the addition of Rs.500000/-made AO on ad-hock basis.”

6. The Id. AR of the assessee in addition to the written submission submitted that the assessee while filling the regular return of income, offered the income of Rs. 25,000/- on purchase of sale of this asset as other income. The same is not offered under the head capital gain therefore, provision of section 50C does not apply and provision of section 43CA will apply. Section 43CA does not existed in the year under consideration and therefore, the invocation of provision of section 50C is incorrect. So far as the other addition made on lump

sum for an amount of Rs. 5,00,000/-. The assessee submitted that the books of accounts of the assessee are audited and submitted all the details. Therefore, making addition of Rs. 5,00,000/- on ad-hoc basis is incorrect.

7. Per contra, the Id. DR relied on the orders of lower authorities. The Id. DR representing revenue heavily relied upon the finding of Id. AO. So far as to addition of Rs. 5,00,000/- is concerned, the relevant finding of Id. AO recorded in para 8 of the assessment order reiterated and Id. DR prayed that addition be sustained.

7.1 As regards the provision of section 50C of the Act, the Id. DR submitted that the assessee squarely covered within the provision of section 50C and therefore, the addition made on this count is also required to be sustained.

8. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee as regards the purchase and sale of immovable property. The cost of purchase which is not disputed amounts to Rs. 16,25,000/-. The assessee sold the

property at Rs. 16,50,000/- and thus offered the income as other income for an amount of Rs. 25,000/- so earned while filling the original return of income. As the purchase and sale transactions for which the profit arise out of that transaction is duly accounted and offered for tax. The transaction is also not offered under the capital gain and therefore, considering this aspect and evidence already placed on record which has not been disputed by the revenue. It is not also not in dispute that the provision of section 43CA was made applicable from the assessment year 2014-15 and since this transaction is duly accounted as adventure in the nature of trade and the profit of this is already included while filing the return of income the addition u/s 50C cannot be made in the hands of the assessee. Therefore, Ground No. 2 raised by the assessee is allowed.

8.1 So far as the Ground No. 3 raised by the assessee, it is not in dispute that the assessee is subjected to audit under the provision of section 44AB of the Act and has filed the audit report and audited accounts. But at the same time, the assessee was called upon to file certain details before Id. AO which the assessee failed to submit. Based on this non action of the assessee Id. AO has invoked the provisions of section 145(3) of the Act. The bench also noted from the

record and grounds so raised by the assessee that the assessee has not raised any ground for rejection of books of accounts. Thus, we confirm the rejection of books of accounts but at the same time looking to the fact presented before us, we are of the considered view that the assessee has already declared profit of business of profession at Rs. 5,84,783/- and at the same time the estimation of additional income of Rs. 5,00,000/- made by the Id. AO is also higher and it does not have any base. Looking to the nature of the business undertaken by the assessee, since, the assessee has not disputed the rejection of books of accounts and considering the overall aspect of the case, we are of the considered view that the assessee might have not disclosed the profit correctly and therefore, not objected to the rejection of the book results. As also assessee failed to give the required details to the Id. AO. Considering that failure of the assessee, we deem it fit in the interest of justice to add 10% more of the profit of Rs.

5,84,783/- and therefore, 10% of this profit is sustained which is Rs. 58,478/- and therefore, this ground of appeal is partly allowed.

8.2 Since we have decided the appeal of the assessee on merit the ground challenging reopening of the assessment become educative in nature and therefore, Ground No. 1 is not decided.

Ground No. 4 being general in nature and the same is also not required to be adjudicated. In terms of these observations, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 21/09/2023

Sd/-

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(Dr. S. Seethalakshmi)  
U;kf;d InL;@Judicial Member

Sd/-

¼ jkBkMs dey'sk t;UrHkbbZ ½  
(Rathod Kamlesh Jayantbhai)  
ys[kk InL;@Accountant Member

Tk;iqj@Jaipur

fnukda@Dated:- 21/09/2023 \*Ganesh Kumar, PS vkn'sk dh  
izfrfyfi vxfzs'kr@Copy of the order forwarded to:

1. vihykFkhZ@The Appellant- Rajkumari Gupta, Jaipur
2. izR;FkhZ@ The Respondent- Income Tax Officer, Ward- 4(2), Jaipur
3. vk;dj vk;qDr@ CIT
4. vk;dj vk;qDr@ CIT(A)
5. foHkkxh; ifzrfuf/k] vk;dj viyh; vf/kdj.k] t;iqj@DR, ITAT, Jaipur. 6. xkMZ QkbyZ@ Guard File { ITA No. 334/JP/2023 }

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