

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCH 'A', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 456/JP/2019
निर्धारण वर्ष/Assessment Year : 2012-13

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| Shri Suresh Kumar Sharma 1-A-61, Shiv Shakti Colony Shastri Nagar, Jaipur | बनाम Vs. | The ITO Ward- 4(5) Jaipur |
| स्थायी लेखा सं./जीआईआर सं./ | PAN/GIR No.: AVRPS 4770 R | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by : Ms. Chanchal Meena , JCIT-DR

सुनवाई की तारीख/ Date of Hearing : 2/03/2020
घोषणा की तारीख/ Date of Pronouncement : 18/03/2020

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of ld. CIT(A), Ajmer dated 15-02-2019 for the Assessment Year 2012-13. The assessee has raised the following grounds.

“1.The ld. CIT(A) has erred on facts and in law in upholding the validity of the order passed by the AO u/s 147 of the I.T. Act, 1961.

2.The Id. CIT(A) has erred on facts and in law in deciding the appeal without admitting the additional evidence filed under rule 46A.

3. The Id. CIT(A) has erred on facts and in law in holding that the assessee has sold the plot to Shri Narendra Choudhary for Rs. 38.50 lacs vide sale agreement dated 25-12-2011, thereby confirming the addition of the same by:-

- (i) Incorrectly holding that assessee has failed to furnish any evidence to show that sale agreement was cancelled.
- (ii) Not dealing with the condition of the assessee that real owner of the plot is Kamal Kumar Sain and not the assessee for which the order of Court was also filed.
- (iii) Incorrectly holding that since the addition was made on the basis of sale agreement signed by the assessee itself, there was no need to allow any cross examination.

3.1 The Id. CIT(A) has erred on facts and in law in confirming the addition for the alleged sale amount without reducing the cost of the plot.

2.1 The Ground No.1 of the assessee is regarding validity of reassessment order passed u/s 147 of the Act.

2.2 The Id.AR of the assessee has submitted that the assessee filed his return of income u/s 139(1) of the Act on 14-09-2012 for the Assessment Year 2012-13 declaring total income of Rs. 1,67,470/-. Thereafter, the AO reopened the assessment by issuing notice u/s 148 of the Act on

16-02-2017 by recording the reason that the assessee vide agreement dated 25-12-2011 transferred an immovable property bearing Plot No. A-425, Tara Nagar, A, Sector 15, Khatipura Road, Jaipur for a consideration of Rs. 38.50 lacs and the said transaction has not been shown in the return of income. The Id.AR of the assessee further submitted that alleged agreement dated 25-12-2011 was found during the course of search and seizure action u/s 132 of the Act in the case of Shri Narendra Singh. Thus the Id.AR of the assessee contended that the provisions of Section 147/148 cannot be invoked when the agreement to sell, which is the basis of reassessment, was found during the course of search and seizure action. In support of his contentions, the Id.AR of the assessee relied on the decision of Coordinate Bench of this tribunal in ITA No. 425/JP/2017 dated 13-12-2017 in the case of Shri Navrattan Kothari vs ACIT. Thus the Id.AR of the assessee submitted that reassessment of a person other than searched person based on seized material can be made u/s 153C r.w.s. 153A of the Act. Therefore, the initiation of proceedings u/s 147/148 of the Act vitiates the entire proceedings.

2.3 On the other hand, the Id. DR has submitted that when the AO has received the information about the transaction of an immovable property

in question by the assessee through agreement dated 25-12-2011 and the said transaction was not declared nor disclosed in the return of income then the said information alongwith agreement dated 25-12-2011 constitute the tangible material to form the belief that income assessable to tax has escaped assessment. The Id. DR further submitted that during the course of search and seizure action in the case of Shri Narendra Singh, only photo copy of the agreement was found. Hence, the AO has rightly invoked the provisions of Section 147/148 of the Act instead of section 153C of the Act as the conditions precedents to invoke the provisions of Section 153C were not satisfied. Thus the Id. DR relied on the orders of the authorities below.

2.4 We have considered the rival submissions as well as the relevant materials available on record. The assessee has not disputed this fact that the alleged transaction of transfer of immovable property bearing Plot No. A-425, Tara Nagar, A, Sector 15, Khatipura Road, Jaipur was not disclosed in the return of income. The AO has recorded the reasons for reopening of the assessment as reproduced in para 2 of the assessment order as under:-

“2. Reason for reopening the assessment was as under:-

On the basis of information available with this office for the year under consideration, the assessee has sold an immovable property having address Plot No. A-425, Tara Nagar A, Sector-15, Khatipura Road, Jaipur vide an valid agreement dated 25-12-2011 for a consideration of Rs. 38,50,000/-.

On perusal of return of income, it is observed that the assessee has not shown the above transaction in the AIR Schedule of his return of income. Further, the assessee has not shown capital gain under the head capital gain on sale of Plot No. A-425 situated at Tara Nagar A, Sector 15, Khatipura Road, Jaipur which was sold through an agreement dated 25-12-2011 for a consideration of Rs. 38,50,000/- in his ROI'

It is clear from the reasons recorded that the AO has received the information regarding sale of the immovable property in question vide agreement dated 25-12-2011 for a consideration of Rs. 38.50 lacs. The assessee has not disputed the execution of the said agreement dated 25-12-2011. However, subsequently, the assessee has claimed that the said agreement was cancelled, though during the assessment proceedings, nothing has been produced before the AO in support of the claim that agreement was cancelled subsequently. It is pertinent to note that it is a case of mischief and forgery on the part of certain persons including the assessee whereby the Plot in question was originally allotted to one Smt. Madhu Bala Jain by Mutual Housing Cooperative Society Ltd. was

subsequently transferred by one Shri Jabbar Singh Rathore by executing the sale deed dated 29-10-2010 in favour of the assessee for a consideration of Rs. 4.00 lacs. This matter was finally reported to Jaipur Development Authority (for short "JDA") as well as the concerned authority regarding the forged documents prepared by these persons particularly by Shri Jabbar Singh Rathore and the matter was then referred to the Arbitrator. The documents of sale deed dated 29-10-2010 and execution of agreement dated 25-12-2011 are not in dispute. Therefore, in these facts of the case, when the assessee has neither disclosed the transaction in question nor offered any capital gain from the said transaction then the information received by the AO based on these documents, to which the assessee is a party, constitutes the tangible material to form the belief that income assessable to tax has escaped assessment. As regards the objection of the Id.AR of the assessee that reassessment ought to have been made u/s 153C of the Act as against u/s 147 of the Act, we find in the reasons recorded by the AO nowhere it is mentioned that the said document was sent by the AO of the searched person after recording his satisfaction. Even otherwise, if the conditions as stipulated u/s 153C r.w.s. 153A of the Act are not satisfied then the AO

can invoke the provisions of Section 147/148 of the Act. Hence the decision relied on by the Id.AR of the assessee in the case of Shri Navrattan Kothari vs ACIT (supra) cannot be applied in the facts of the present case. In the said case, the AO has stated in the reasons recorded that the documents were seized and forwarded by the AO of the searched person. Accordingly, in the facts and circumstances of the case, we do not find any error or illegality in the initiation of proceedings u/s 147/148 of the Act. Thus the Ground No. 1 of the assessee is dismissed.

3.1 The Ground Nos. 2 and 3 of the assessee are regarding addition of Rs. 38.50 lacs on account of the amount received for transfer of an immovable property.

3.2 The Id.AR of the assessee has submitted that the agreement dated 25-12-2011 in question is not a legal agreement as the same is not enforceable in law. The property was under dispute as per JDA record. The property stands in the name of one Shri Kamal Kumar Sain. The Id.AR has further contended that the amount mentioned in the agreement was never received by the assessee and there was a subsequent cancellation of agreement dated 25-12-2011. The Id. CIT(A) did not admit the additional evidence filed by the assessee by holding that case of

the assessee is not covered by any of the circumstances given in Clause (a) to (d) of Rule 46A (1) of Income Tax Rules, 1962. However, the assessee was ready to produce the witnesses of the sale agreement as well as cancellation agreement and the statements of those witnesses were recorded by the AO during remand proceedings wherein the AO has not asked any question about the consideration amount in the agreement. Thus the Id.AR of the assessee contended that when the AO has recorded the statement of one Shri Laxman Yadav during remand proceedings then the additional evidences produced by the assessee ought to have been admitted, in support of his claim that the alleged agreement dated 25-12-2-2011 was cancelled subsequently on 25-01-2012 and there was no exchange of sale consideration.

3.3 On the other hand, the Id. DR has submitted that the agreement dated 25-12-2011 states that the assessee received full consideration of Rs. 38.50 lacs at the time of signing of the said agreement. Therefore, the subsequent stand of the assessee that he has not received the consideration and consequently the agreement was cancelled is nothing but a self serving document prepared to avoid the tax liability. The Id. DR has further contended that alleged cancellation agreement is a self serving

document of the assessee as well as other party in whose hands also the addition of the said amount was made on account of unexplained investment. The ld. DR has contended that the alleged cancellation agreement was neither found during search and seizure action nor was produced before the AO. Even the assessee never claimed before the AO that the agreement dated 25-12-2011 was subsequently cancelled. The ld. DR further contended that once the assessee has received sale consideration of Rs. 38.50 lacs then it is irrelevant whether the assessee was legal owner of the property in question. The remand report was called for by the ld. CIT(A) to examine the veracity of the documents proposed to be produced by the assessee. Hence, the cancellation agreement is an afterthought documents prepared by these parties. Thus the ld. DR relied on the orders of the authorities below.

3.4 We have considered the rival submissions as well as the relevant materials available on record. The AO has reproduced the agreement dated 25-12-2011 in the assessment order at pages 6 and 7. The said agreement was written in hand by the assessee and has been signed by the assessee as well as Shri Narendera Singh. The assessee has not disputed the execution of the said agreement dated 25-12-2011. The language of

the said agreement is clear and unambiguous regarding the details of the property as well as consideration of Rs. 38.50 lacs which was received by the assessee. It is specifically stated in the agreement dated 25-12-2011 that entire sale consideration of Rs. 38.50 lacsc was received by the assessee and the possession of the property was handed over to buyer. It is also stated in the agreement that due to Govt. Holiday on 25-12-2011 the registration of the said document could not be done. During the assessment proceeding, the assessee never took the stand that said agreement was cancelled due to non-payment of the consideration. Only before the Id. CIT(A), the assessee sought to produce the additional evidence in the shape of cancellation agreement dated 25-01-2012. The Id. CIT(A) called for remand report from the AO on the additional evidence produced by the assessee. The AO submitted his remand report dated 11-09-2018. The AO has referred to the statement of one Shri Laxman Yadav recorded on 10-09-2018 wherein he stated that at the time of signing the agreement, except the assessee and Shri Narendera Choudhary, at the residence of the assessee, no other persons were present. Even otherwise, we find that alleged cancellation agreement was not found during the course of search and seizure action or even not

referred during the course of assessment proceeding and it is surfaced first time after the assessment order was completed by the AO . This clearly shows that this is an afterthought manufactured document in support of the claim of non-receipt of sale consideration. The agreement which was found during the course of search is not in dispute and leaves no scope of any inference or possibility against non-receipt of sale consideration as the said agreement states in clear terms that entire sale consideration was received at the time of agreement and the possession was handed over to the buyer. Accordingly, in the facts of the case, where the assessee is also a party to the illegal transaction of purchase and sale of the land in question then the alleged stand of the assessee of subsequent cancellation of the agreement does not inspire confidence. It is pertinent to note that the assessee claimed to have purchased this property in question vide sale deed dated 29-10-2010 for a consideration of Rs. 4.00 lacs only whereas the said plot of land was sold by the assessee vide agreement dated 25-12-2011 for a consideration of Rs. 38.50 lacs. In the absence of any development during this intervening period of one year from the date of purchase and till the date of sale, the appreciation of value from Rs. 4.00 lacs to Rs. 38.50 lacs indicates the

involvement of the parties in mischievous acts of showing the minimum amount of purchase consideration by the assessee in comparison to the sale consideration shown in the sale agreement. Accordingly, in the facts and circumstances of the case, we do not find any substance or merit in the appeal of the assessee. Thus Ground No. 2 and 3 of the assessee are dismissed.

4.0 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18/03/2020.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/03/ 2020

*Mishra

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

1.अपीलार्थी / The Appellant- Shri Suresh Kumar Sharma, Jaipur

2.प्रत्यर्थी / The Respondent- ITO, Ward- 4(5), Jaipur

3.आयकर आयुक्त(अपील) / CIT(A),

4.आयकर आयुक्त / CIT,

5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6.गार्ड फाईल / Guard File (ITA No456/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar