

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.753/Ind/2019
Assessment Year : 2014-15

Shri Bharat Jaroli, B.No. 45, 1, Kila Road, Mahaveer Bagh, Neemuch (Assessee / Appellant)	<u>बनाम/</u> Vs.	Pr. CIT, Ujjain (Revenue / Respondent)
PAN: AANPJ5994K		
Assessee by	Shri Anil Khandelwal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.01.2024	
Date of Pronouncement	29.02.2024	

आदेश/ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the revision order dated 19th March, 2019, passed by Pr. Commissioner of Income-tax, u/s 263 of the Income-tax Act, 1961, for the assessment year 2014-15.

2. There is a delay of 62 days in filing the present appeal. The assessee has filed application for condonation of delay, which is supported by an affidavit.

3. We have heard the Ld. Authorized Representative of the assessee as well as Ld. Departmental Representative on condonation of delay and

carefully perused the reasons explained by the assessee in the application as well as affidavit.

4. The assessee has stated the following reasons in the affidavit :-

- "1. The appellant purchased a land as per sale deed dated 18.09.2013. However, subsequently the appellant came to know that the Seller Mr. Kalyanmal Sharma had already executed sale agreement for the same land in favour of Deep Prakash Goyal in the year 2010. Mr. Divya Prakash Goyal approached the Session Court, Neemuch for getting the land registered in his name. The Hon'ble Court after considering the entire facts and evidences, by order dated 03.05.2019, directed to get the sale deed registered in favour of Deep Prakash Goyal.
2. In this manner, the appellant was deeply involved in a long and desperate litigation and the purchase consideration of about Rs. 4.99 crore paid to the seller Mr. Kalyanmal Sharma also became difficult to recover.
3. In the above circumstances, the appellant was too busy, occupied, desperate and in tension for a long time upto the relevant time of filing the appeal.
4. I enclose herewith the relevant Court orders for your kind consideration.
5. Considering the above facts, I humbly request you to kindly condone the delay and oblige."

5. Thus, the assessee has explained the cause of delay as the land purchased by the assessee was subsequently challenged before the Court and assessee was contesting the litigation, wherein ultimately the Court of District and Session Judge, Neemuch decided the matter against the assessee and directed the seller to executed the sale deed in favour of one Mr.Divya Prakash Goyal vide order dated 3rd May, 2019. These facts were explained by the assessee are not in dispute as the assessee has filed a copy of the order of the District and Session Judge. Accordingly, we are satisfied

that the assessee was having a sufficient cause for delay of 62 days in filing the present appeal. Hence, the delay in filing the appeal is condoned.

6. The assessee has raised following grounds of appeal :-

1. *On the facts and in the circumstances of the case the appeal is time barred by 62 days, and the delay may kindly be condoned considering the explanation attached.*
2. *On the facts and in the circumstances of the case, Ld. Pr. CIT erred in law in assuming jurisdiction u/s 263 of the Act on facts contrary to the records of assessment proceedings for A.Y. 2014-15.*
3. *On the facts and in the circumstances of the case, Ld. Pr. CIT erred in law in passing order u/s 263 setting aside assessment for A.Y. 2014-15 as erroneous and prejudicial to the interests of revenue.*
4. *On the facts and in the circumstances of the case, Ld. Pr. CIT erred in law in not considering the court order produced before him declaring the relevant land purchase transaction (deeds) as null and void thereby land purchase consideration stood cancelled so as to make applicability of Section 40A(3) as irrelevant for A.Y. 2014-15.*

7. The Ld. Authorized Representative of the assessee submitted that the assessee is a builder and developer and filed his return of income on 30th September, 2014, declaring total income of Rs. 26,28,430/-. The scrutiny assessment u/s 143(3) was completed on 29th December 2016, at the returned income. Thereafter, the Pr. CIT initiated proceedings u/s 263 by issuing show cause notice dated 22nd February, 2019, and taken up the issue of disallowance u/s 40A(3) of the Income-tax Act, 1961, in respect of cash payment for purchase of immovable property (Land). The Ld. Authorized Representative of the assessee has submitted that out of four lands purchased by the assessee during the year under consideration, two were purchased from Shri Kalyan Sharma and the transaction

was subsequently declared as null and void by the District Court, Ratlam vide order dated 3rd May, 2019, and the sale deed was directed to be executed in favour of Shri Divya Prakash Goyal. Thus, the Ld. Authorized Representative of the assessee submitted that when the transaction itself was declared null and void then disallowance u/s 40A(3) cannot be made. He has further submitted that during the course of assessment proceedings, the assessee produced books of accounts and records before the AO. The cash payments were made as per the demand of the seller as recorded in the purchase deed. The Department has not disputed the genuineness of the payment and the identity of the payee and, therefore, by considering all these facts, the AO has not made any disallowance u/s 40A(3) of the Act. Thus, the Ld. Authorized Representative of the assessee has submitted that the order passed by the AO is not erroneous and prejudicial to the interests of revenue, when the assessee has explained all the facts relevant to the transaction and genuineness of the transaction and payment of cash is not in dispute. In support of his contention, he has relied upon the order of the Jaipur Bench of the Tribunal in the case of A. Daga Royal Arts vs. ITO, 94 taxmann.com 401, and submitted that the Tribunal has held that no disallowance u/s 40A(3) can be made where identity of seller from whom various plots of lands have been purchased in cash and source of cash payment as withdrawn from the assessee bank has been established and thereafter the genuineness of the transaction has been established. He has also relied upon the decision of Punjab & Haryana High Court in the case of Gurdas Garg vs. CIT, 63 taxmann.com 289, wherein the Hon'ble High Court has held that since the genuineness of the transaction have not been disbelieved by the authorities, therefore, it is a case of business expediency and could not be disallowed u/s 40A(3) of the Act. The Ld. Authorized Representative of the assessee has referred to the sale deed and submitted that

there is a specific mention in the sale deed that the purchaser wanted the cash payment for repayment of the loans and other house hold expenditure. The Ld. Authorized Representative of the assessee has submitted that the impugned order passed by the Pr. CIT is not sustainable and liable to be quashed.

8. On the other hand, the Ld. Departmental Representative has submitted that the AO has passed the assessment order without conducting inquiry on the issue of disallowance u/s 40A(3). Therefore, this is a case of complete lack of inquiry on the part of AO, which renders the assessment order erroneous so far as prejudicial to the interests of revenue. The Ld. Departmental Representative has further contended that the provisions of Section 40A(3) are applicable even in case of stock in trade as held by Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh vs. ITO, (1991) 191 ITR 667. He has relied upon the impugned order of the Pr. Commissioner of Income-tax.

9. We have considered the rival submissions as well as the material placed on record. The AO has passed the order u/s 143(3) on 29.12.2016, which reads as under :

"1. The assessee filed return of income for the assessment year 2014-15 on 30/09.2014 declaring total income of Rs. 26,28,430/-.

2. The case was selected for scrutiny through CASS and notice u/s 143(2) was issued on 1.9.2015, which was duly served on the assessee on 08.09.2015, fixing the case for hearing on 14.09.2015.

3. Further, notice u/s 142(1) was issued on 04.04.2016, which was duly served on the assessee through speed post, fixing the case for hearing on 11.04.2016. Another notices u/s 143(2) was issued on 14.09.2016, which was duly served on the assessee through speed post, fixing the case for hearing on 22.09.2016. In response to the above notices, Shri T. C. Airan,

I.T.P. and Shri Bharat Jaroli, attended from time to time. Written submissions were filed during the course of assessment proceedings which were placed on record after perusal. Books of accounts, bills & vouchers etc. were produced and verified by test check.

4. The assessee derives income from the business of builder and developer. After discussion, the total income shown by the assessee in the return of income is accepted.

Assessed Total Income Rs. 26,28,430/-

5. Assessed u/s 143(3) of the Income-tax Act and interest are determined as per the ITNS-150 which is a part of this order. Demand Notice and Challan are issued accordingly. "

10. Subsequently, the Pr. CIT initiated proceedings u/s 263 on the issue of disallowance u/s 40A(3) vide SCN dated. 22.02.2019. It is apparent that the assessment order is silent about the issue of disallowance u/s 40A(3). We further note that the AO issued notice u/s 142(1) of the Income-tax Act, 1961, on 04.04.2016, which reads as under :-



GOVT. OF INDIA
MINISTRY OF FINANCE (DEPT. OF REVENUE)

**OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX, RATLAM**

Room No. 6, Aayakar Bhawan, Mitra Niwas Road, Ratlam-457001
Phone: 07412-223544, Fax: 07412-223545

NOTICE UNDER SECTION 142(1) OF THE INCOME TAX ACT, 1961

Date: 04/04/2016

PAN AANPJ5994K

To,
M/s Bharat Jaroli
B.No.45 Jaroli Bhawan
1- Kila Road Mahaveer Bag
Neemach - 458441

In connection with the assessment for the assessment year 2014-15 you are required to produce or cause to be produced before me at my office at Room No. 6, Aayakar Bhawan, Mitra Niwas Road, Ratlam on 11/04/2016 at 10.00AM documents specified below:-

1. Copy of return along with acknowledgement of return for AY
2. Following documents for the assessment year AY
 - a. Computation of income
 - b. Original report u/s 44AB
 - c. Final accounts
 - d. Form No 26AS
 - e. Evidence in respect of deduction claimed under chapter VIA of the Act, if any
3. Following documents for the assessment year for earlier two assessment years
 - a. Computation of income
 - b. report u/s 44AB
 - c. Final accounts

4. Bank statements for all the Bank A/c's

(P K Singi)
Deputy Commissioner of Income Tax
Ratlam

T.C.
Jee
A.R.

11. Thus, the AO did not raise any query on the issue of disallowance u/s 40A(3) of the Act. Therefore, the AO has not taken up this issue for scrutiny. It is manifest from the record that it is a case of absolute lack of inquiry on the part of AO on the issue of disallowance u/s 40A(3) of the Act, despite the payment of cash by the assessee is not in dispute. When the AO has not taken up the issue for scrutiny, then the question of taking a possible view on the part of the AO does not arise. It is pertinent to note that even if the assessee makes out a case falling in the exception provided in Rule 6 DD of the Income-tax Rules, the said claim of the assessee has to be verified by the AO, considering all relevant evidence as well as the explanation of the assessee. If the assessee takes a plea that the payment in cash was made as per the demand of the seller then it is up to the AO to conduct inquiry to verify this fact from the seller itself, but in the absence of any query or inquiry conducted by the AO, the question of any explanation by the assessee to claim that the case of the assessee falls in the exception provided under Rule 6DD of the Income-tax Rules is premature. Therefore, without expressing any view in the merits of the issue, we are of the considered opinion that there is a complete lack of inquiry on the part of the AO, which renders the assessment order erroneous so far as it is prejudicial to the interests of revenue. The case laws relied upon by the Ld. Authorized Representative of the assessee would not help the assessee at this stage when the AO has not conducted any inquiry on the issue.

Accordingly, we do not find any error or illegality in the impugned order of the Pr. Commissioner of Income and the same is upheld.

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

Order pronounced in the open court on 29.02.2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore

दिनांक/Dated : 29.02.2024.

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore