

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3690/Del/2016  
Assessment Year: 2006-07

Hafizuddin Hazi,  
C/o Raj Kumar & Associates, CA,  
L-7A (LGF), South Extn., Part-2,  
New Delhi.

Vs ITO,  
Ward-48 (2),  
New Delhi.

PAN: AAQPH6525F

(Appellant)

(Respondent)

Assessee by	:	Shri Raj Kumar, CA & Shri Sachin Kumar, CA
Revenue by	:	Shri Kumar Padmapani Bora, Sr. DR
Date of Hearing	:	18.11.2021
Date of Pronouncement	:	16.02.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 29<sup>th</sup> March, 2016 of the CIT(A)-16, New Delhi, relating to AY 2006-07.

2. There was a delay of 20 days in filing of the appeal for which the assessee has filed a condonation application along with the affidavit of the assessee explaining the reasons for such delay. After considering the contents of the condonation application and hearing both the sides, the delay in filing of the appeal by the assessee is condoned and the appeal is admitted for hearing.

3. Facts of the case, in brief, are that the assessee is an individual and had filed his return of income on 31.10.2006 declaring an income of Rs.10,87,058/-. The return was processed accordingly. Subsequently, the AO reopened the assessment of the case u/s 147 of the IT Act after recording the following reasons:-

“Inputs received from the system revealed that assessee has purchased property amounting to Rs.3150000/- and the same is not verifiable from of the return of income filed for the assessment year 2006-07 relevant to financial year 2005-06. In view of above, it is clear that the assessee has not disclosed fully and truly all materials facts by not furnishing in the return of income and the omission lies on the part of the assessee. Since an information in the possession of the Income-tax Officer that an transaction of investment in property of Rs.3150000/- had been undertaken therefore I have reasons to believe that an amount of Rs. 3150000/- has escaped assessment within the meaning of section 147 of the Income tax act, 1961. The time limit to reopen case is exceeding four years. Therefore, the proposal is being sent to JCIT Range-30, New Delhi for approval u/s 150(2) of the IT act 1961 to issue notice u/s 148 of the I.T. Act in.....of section 151(2) of the IT Act, 1961.”

4. During the course of assessment proceedings, the AO noted that the assessee has purchased a property No, A-43 Park End, Vikas Marg, Delhi for Rs.31,50,000/-. The AO adopted the land rate for the property of 133.78 sq mtrs for assessment purposes @ Rs. 50,214/- per sq. mtr. following the report of DVO who valued the property at Rs.1,02,57,600/-. The A.O accordingly made an addition of Rs,70,57,600/- (1,02,07,600-31,50,000) on this account. Aggrieved the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee vide order in Appeal No 124/2014-14 dated 29.03.2016. Consequent upon the order of the CIT(A), the AO recomputed the income of the assessee. The assessee filed an application for rectification of this re-computation

claiming that the appeal effect was not correctly given by the AO and that the AO had not adhered to the direction of the CIT(A) that circle rate of Rs 21,800/- be adopted for purposes of calculation and then a deduction of 29.5% is to be allowed. In the order u/s 154 the AO rectified an error in calculation of the DVO pointed out by the CIT(A) in his order whereby the property was to be correctly valued at Rs 1,02,57,600/- as against Rs 1,02,07,600/- taken by the AO in the original assessment order. The assessee claimed that the AO, however, did not adopt the circle rate of Rs 21,800/- per sq mtr as against the rate of Rs 50,215/- per sq mtr adopted by the DVO as per directions of the CIT(A). The assessee accordingly filed the appeal against the rectification order of the AO dated 20.03.2018 on this limited issue.

5. In appeal, the Id.CIT(A) partly allowed the claim of the assessee by granting benefit of 7.5% on account of open nala and 10% on account of vicinity to the mosque, from the value arrived at by the AO. He also allowed further deduction of 12%. Thus, the Id.CIT(A) gave a benefit of 29.5% deduction from the value adopted by the AO.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That under the facts and circumstances, Ld. AO erred in law as well as on facts in adopting the deemed purchase consideration of property no. 43, Park End, Vikas Marg, Delhi - 110092 at Rs. 1,02,07,600/- on the basis of DVO valuation against correctly declared at Rs.31,50,000/- on the basis of registered sale deed, thus, erred in making an addition of Rs.70,57,600/-

and Ld. CIT (A) further erred in not deleting the whole addition but in giving partial relief to the extent of as calculated by adopting the land valuation as per Circle rate and thereafter, by further allowing a deduction of 29.5% out of the value so arrived at for the defects in the location etc. of the property (which total relief will calculate Rs. 57,05,864/-).

2. That without prejudice, no addition can be made only on the basis of DVO's report in the absence of any supporting or corroborative material justifying the action of addition.

3. That without prejudice, under the facts and circumstances, initiation of proceedings U/s. 147 / 148 and consequential Asstt. is illegal, mechanical, without application of mind and un-warranted, which is also based on factually incorrect information.

4. That without prejudice, under the facts and circumstances, approval U/s. 151 is mechanical and without application of mind, hence, cannot provide a valid jurisdiction for the proceedings u/s. 147 /148.

5. That without prejudice, under the facts and circumstances, the reference to the valuation cell is illegal and un-warranted, moreso, being made without rejection of books of accounts and also, since, made without recording satisfaction of alleged under declaration of purchase value.

6. That without prejudice, the impugned Asstt. as well as consequential addition is un - sustainable in law in the absence of any addition for which the Re-Asstt. Proceedings were initiated.”

6.1 The assessee has also filed the following additional grounds:-

“That the following grounds of appeal as taken in Form - 36 may be in the nature of additional grounds:-

“Ground No. 3

That without prejudice, under the facts and circumstances, initiation of proceedings U/s. 147 / 148 and consequential Asstt. is illegal, mechanical without application of mind and un - warranted, which is also based on factually incorrect information.

Ground No. 4

That without prejudice, under the facts and circumstances, approval U/s.151 is mechanical and without application of mind, hence, cannot provide a valid jurisdiction for the proceedings u/s. 147 /148.

## Ground No. 5

That without prejudice, under the facts and circumstances, the reference to the valuation cell is illegal and un - warranted, moreso, being made without rejection of books of accounts and also, since, made without recording satisfaction of alleged under declaration of purchase value.

## Ground No. 6

That without prejudice, the impugned Asstt. as well as consequential addition is un - sustainable in law in the absence of any addition for which the Re - Asstt. Proceedings were initiated.”

7. The Id. Counsel for the assessee submitted that all material facts are available on record and no new facts are required to be investigated. Further, the grounds being purely legal in nature the same should be admitted for adjudication. For the above proposition, the Id. Counsel relied on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd., 229 ITR 383 and Gedore Tools Pvt. Ltd., 238 ITR 268.

8. After hearing both the sides and considering the fact that the additional grounds raised by the assessee are purely legal in nature and all material facts are already on record, the additional grounds raised by the assessee are admitted for adjudication.

9. The Id. Counsel for the assessee, at the outset, submitted that reassessment proceedings u/s 147 are invalid since same has been issued on wrong facts and in a mechanical manner and on borrowed satisfaction and without application of

independent mind by the AO. Referring to the reasons recorded by the AO for reopening of the assessment, he submitted that the case was reopened on the ground that the assessee has purchased the property for Rs.31,50,000/- and has not disclosed material facts by not furnishing the return of income and, hence, Rs.31,50,000/- has escaped assessment. Referring to the copy of the assessment order, he submitted that the AO himself in the assessment order has written that the assessee has filed the original return of income on 31.10.2006 declaring an income of Rs.10,87,058/-. Even in the approval taken u/s 151 of the Act, a perusal of the same shows as under:-

“Whether any voluntary return had already been filed : No

If so, the date of filing the said return : N.A”

10. Therefore, the reasons recorded by the AO for reopening of the assessment and the approval given by the higher authorities show that there is complete non-application of mind.

11. The ld. Counsel, referring to the decision of the Hon’ble Delhi High Court in the case of PCIT vs. RMG Polyvinyal (I) Ltd., reported in 396 ITR 5 (Del) submitted that the Hon’ble Court has held that the information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the AO who had deprived himself of that opportunity

that proceeding on erroneous premise that the assessee had not filed a return for the AY 2004-05 when in fact it had. Referring to the decision of the Hon'ble Gujarat High Court in the case of Vijay Haishchandra Patel vs. ITO, reported in 400 ITR 167 (Guj), he submitted that the Hon'ble High Court in the said case has quashed the reassessment proceedings on the ground that the notice was issued on the ground that no return was filed for the year in question. The assessee, in objections, pointed out that the return was filed and income in question was disclosed. The Hon'ble Court held that when the formation of belief was on factually incorrect premise, the reassessment is not sustainable. Referring to various other decisions, he submitted that where the very reason for reopening of the assessment without ascertaining whether the assessee had filed the return or not, reopening of assessment was not valid and should be quashed and set aside.

12. The Id. Counsel for the assessee, in his next plank of arguments, submitted that the reasons for reopening are that investment of Rs.31,50,000/- for purchase of property as per sale documents has escaped assessment as no return of income was filed. He submitted that the reopening was initiated to verify the source of investment of Rs.31,50,000/- in the property. However, in the assessment proceedings, after verification, no addition was made for declared investment in property for Rs.31,50,000/-. Therefore, when no addition is made on the basis of which reasons are recorded, no other addition can be made and the

assessment/initiation of reassessment proceedings has to be quashed. For the above proposition, he relied on the following decisions:-

- (i) Ranbaxy Laboratories Ltd. vs. CIT (2011) 12 taxmann.com 74 (Del);
- (ii) CIT vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bombay); and
- (iii) Indu Arts vs. ACIT (2017) 88 taxmann.com 182 (Delhi-Trib).

13. The ld. Counsel, referring to various decisions, submitted that the approval u/s 151 was granted in a mechanical manner, without application of mind and on non-existing facts. Therefore, such initiation of reassessment proceedings and approval given being not in accordance with the law, such reassessment proceedings should be quashed. For the above proposition, he relied on the following decisions:-

- (i) German Remedies Ltd. vs. DCIT (2006) 287 ITR 494 (Bom);
- (ii) Smt. Kalpana Shantilal Hariya vs. ACIT, WP No.3063/2017 (Bom HC); and
- (iii) VRC Township Pvt. Ltd. vs. ITO, ITA No.1503/Del/2017, dated 14.10.2020

14. So far as the merit of the case is concerned, the ld. Counsel submitted that the assessee purchased the house property No.43, Park End, Vikas Marg, Delhi for Rs.31,50,000/- through registered sale deed. The AO, on the basis of DVO report estimated the purchase cost at Rs. 1,02,67,600/- by adopting land value at Rs.50,214/- per Sq. Mtr. The CIT(A), directed to adopt land circle rate of Rs.21,800/- per Sq. Mtr. and thereafter further allowed a deduction therefrom

@29.5% for various reasons on account of property location. He submitted that after the above relief, as per appeal effect order dtd.20.03.2018, the relief stood calculated at Rs.30,25,992/- and the addition sustained was Rs.40,81,608/-. He submitted that the appeal of the Revenue was dismissed on account of low tax effect, therefore, the only question that arises is the addition of Rs.40,81,608/- sustained by the CIT(A). The Id. Counsel submitted that the assessee has been maintaining proper books of account and the purchase consideration is Rs.31,50,000/-, which is evidenced by documents is undisputed. The A.O, did not find any material to disbelieve the declared consideration and has also not rejected the books of account before referring the matter to DVO. He submitted that in the absence of rejection of books of account, reference to DVO is invalid in law. For the above proposition, he relied on the following decisions:-

- (i) SARGAM CINEMA VS. CIT 328 ITR 513 (SC);
- (ii) CIT VS. BAJRANG LAL BANSAL 335 ITR 572 (DEL);
- (iii) LUCKNOW PUBLIC EDUCATION SOCIETY (2011) 339ITR 588(ALL);
- (iv) GOODLUK AUTOMOBILES (P) LTD. VS. ACIT 78 DTR (GUJ.) 104; AND
- (v) CIT V/S SMT, SURAJ DEVI 64 DTR (DEL) 372;

15. The Id. Counsel for the assessee submitted that there is no adverse material on record to justify the reference to DVO. Further, the report of the DVO is only

on estimation since no incriminating material etc. is available on record to suggest the declared consideration as incorrect, therefore, the declared consideration cannot be doubted only on the basis of the report of the DVO. For the above proposition, he relied on the following decisions:-

- (i) K.P. YARGHESE VS. ITO 131 ITR 597 (SC);
- (ii) CIT VS. PUNEET SABHARWAL 338 ITR 485 (DEL);
- (iii) CIT VS. SADHNA GUPTA 352 ITR 595 (DEL);
- (iv) CIT VS. NAVEEN GERA 328 ITR 516 (DEL);
- (v) CIT VS. SMT. SHAKUNTALA DEVI 316 ITR 46 (DEL); &
- (vi) TEEN MURTI PRODUCTS PVT. LTD. VS. ITO - ITA No.2281/DEL/2010 A.Y.06-07.

16. The Id. Counsel for the assessee pointed out various defects in the report of the DVO which are enumerated at page 7 of the synopsis. He submitted that the Id.CIT(A) also did not consider the following facts before sustaining the addition:-

- (a) Location of the property not comparable;
- (b) Disturbance due to Metro work;
- (c) Big MCD Kura Ghar; and
- (d) Disturbance due to nearby Masjid.

17. He submitted that the Id.CIT(A) is not a technically qualified person to sit over the report of Government Approved Valuer. He accordingly submitted that

the report of the Government Approved Valuer filed by the assessee should be accepted and no addition is called for.

18. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

19. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied by ld. Counsel for the assessee. We find, the assessee, in the instant case, had filed the original return of income on 31.10.2006 declaring the total income at Rs.10,87,058/- which was processed accordingly. We find, the AO reopened the assessment on the ground that the assessee has purchased residential property amounting to Rs.31,50,000/- and the same is not verifiable from the return of income filed for the AY 2006-07 and the assessee has not furnished the return of income. The reasons of such reopening has already been reproduced in the preceding paragraph. From the above, it is clear that the reopening was made on the ground that the assessee has not filed the return of income and, therefore, the income to the extent of Rs.31,50,000/- has escaped assessment. Since the assessee has already filed the return of income, a fact brought on record by the AO himself in the body of the assessment order itself, therefore, the very reason for which the case of the assessee was reopened is factually incorrect.

20. It has been held in various decisions that when the AO reopened the case of the assessee on the premise that the return was not filed as per the database of the

Department although it was already filed, then, such reassessment proceedings are not in accordance with the law and has to be quashed. For this proposition, we rely on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. RMG Polyvinyal (I) Ltd. (supra), and the decision of the Hon'ble Gujarat High Court in the case of Vijay Haishchandra Patel vs. ITO (supra) relied on by the Id. Counsel for the assessee. The various other decisions relied on by the Id. Counsel on this issue also support his case to the proposition that when reopening was based on the premise that the assessee has not filed his return of income as per database of the Department, but, the assessee has actually filed the return of income, then, such reopening is not in accordance with the law and has to be quashed since such reopening was based on wrong facts. We, therefore, quash the reassessment proceedings initiated by the AO and subsequent proceedings are accordingly quashed. Since the assessee succeeds on this legal ground, the various other grounds challenging the reopening of the assessment as well as addition on merit become academic in nature and, therefore, are not being adjudicated.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16<sup>th</sup> February, 2022.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated:16<sup>th</sup> February, 2022.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

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