IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH, NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER,

SA No. 436/DEL/2017
&
ITA No. 3375/DEL/2017
[A.Y. 2011-12]

Shri Prahalad Singh C/o M/s RRA Tax India D – 28, South Extension Part – I, New Delhi PAN : BOKPS 7419 N	Vs.	Income-tax Officer Ward 3(2) Gurgaon
[Appellant]		[Respondent]

Date of Hearing : 10.05.2018
Date of Pronouncement : 11.05.2018

Assessee by : Shri Rakesh Gupta, Adv
Shri Somil Agarwal, Adv

Revenue by : Shri Atiq Ahmed, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the CIT(A)-I, Gurgaon dated 28.04.2017 pertaining to A.Y 2011-12.

2. Vide Ground Nos. 1 and 2, the assessee has challenged the validity of assessment order dated 31.03.2016 framed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the facts of the case are that return of income was filed on 18.09.2012 showing total income at Rs. 11,83,380/-. Subsequently, it came to the notice of the AO that the assessee has sold land at Village Kadarpur, The. Sohna on 28.09.2010 alongwith others for Rs. 30.24 crores. The AO found that the assessee's share was Rs. 8.43 crores. The AO noticed that the assessee has not shown any capital gain although the land sold was an asset within the meaning of the provisions of section 2(14) of the Act. Accordingly, the AO issued notice u/s 148 of the Act on 29.10.2014. No return was furnished in response to the notice u/s 148 of the Act. Hence, the AO issued notice u/s 42(1) of the Act asking the assessee to furnish

reply/return of income. Subsequently, the assessee submitted that the original return filed on 18.09.2012 may be treated as return filed in compliance to notice u/s 148 of the Act. The AO accordingly issued notice u/s 143(2) of the Act and after discussion with the assessee, assessment was completed at Rs. 8.28 crores after making addition on account of capital gain on the impugned sale of land at Village Kadarpur, Teh. Sohna, which was the basis for reopening the assessment.

5. The assessee agitated the matter before the CIT(A) claiming that no valid assessment has been framed by the AO because the reasons recorded by the AO were unsigned and there was no material to form a belief that income has escaped assessment. The plea of the assessee was not entertained by the CIT(A) and this grievance was accordingly dismissed.

6. The bone of contention is the reason for the belief that income has escaped assessment u/s 147 of the Act. The same is exhibited at page 14/181 of the paper and reads as under:

"As per information available with the department, Sh Prahlad Singh S/o Sh Sukhbir Singh and others Resident of Vill Kadarpur, Distt. Gurgaon have sold their land measuring 56 Kanal 6 Marla for a sum of Rs 30.24 crores to M/s Hamara Realty Pvt. Ltd, New Delhi on 28-09-2010.

Out of above, 881/3150 share relates to Sh Prahlad Singh S/o Sh. Sukhbir Singh who received sale consideration of Rs 8,43,00,000/- vide demand draft No 164852 dated 27/09/2010 drawn on SBI, Janpath, New Delhi. The said land falls within the municipal limits of Municipal Corporation, Gurgaon. Therefore, capital gain arises on the sale of said land situated at village Kadarpur. Distt. Gurgaon.

The assessee has filed the return of income for the AY 2011-12 vide acknowledge No 48931571080912 on 18/09/2012declaring total income of Rs 11,,83380/- from income from other source and Rs 552617/-as income from agriculture. The assessee has paid tax of Rs 390830/- on the returned income. From the perusal of record /return, it is noticed that the assessee has not declared any capital gain so arisen. The cost of acquisition in this case is taken as Rs 100000/- per as on 1.1.1980 being the property, was inherritant and whole receipt is capital gain. Therefore, I have

reason to believe and satisfied that the income to the extent of Rs 8,43,00,000/- has escaped assessment within the meaning of section 147 of I.T. Act, 1961 due to failure on the part of assessee to truly and fully disclose the particulars of his income.

Therefore, to bring it to tax, proceeding under section 147 are being initiated.

Accordingly, notice under section 148 of income tax Act is being issued.

Dated: *[Sanjay Kumar]*
Income tax Officer
Ward 2(2), Gurgaon"

7. It can be seen from the above that this document is not signed by the AO. The Hon'ble Punjab and Haryana High Court in the case of Atlas Cycle Industries Ltd Vs. CIT reported at 180 ITR 0319 has held that :

"the impugned reopening is bad in law for the reason that the reasons recorded is without any signature of the AO as is clear from the copy of reasons recorded supplied to the assessee in response to RTI application. In such a situation, present is a case where notice u/s 148 has been issued without recording reason".

8. A similar view was taken by the Hon'ble Calcutta High Court in the case of B.K. Gooyee Vs. CIT [1966] 62 ITR 109 [Cal] wherein on identical facts, the Hon'ble High Court has held that :

> *"A notice under Section 22(2) of the Act which initiates the assessment proceeding requires a signature. Service of valid notice is pre condition to the jurisdiction of the ITO. Non signing of a notice does not come within the formula of an obvious clerical mistake. There cannot be any waiver by the assessee of an irregularity of an unsigned notice."*

9. The Hon'ble Madhya Pradesh High Court in the case of Umashankar Mishra reported in [1982] 136 ITR 330 has held that:

> *"Section 282 of the Act provides that a notice under the Act may be served on the person named therein as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-rule (3) of Rule 1 of Order 5, CPC, provides that every summons shall be signed by the judge or such officer, as he appoints. In view of this provision, it must be held that the notice to show cause why penalty should hot be levied issued by the ITO should have been signed by the ITO and the omission to do so invalidated the notice*".

10. The judgment of the Hon'ble Hgh Court of Calcutta in the case of B.K. Gooyee [supra] was relied upon and the Hon'ble Madhya Pradesh High Court further held that:

> *"The provisions of section 292B of the Act intended to ensure that an inconsequential technicality does not defeat justice. But, the signing of a notice under Section 271(1)(a) of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of Order 5, Rule 1(3) of the CPC, which are applicable by virtue of Section 282 of the Act. Under the circumstances, the provisions of Section 292B of the Act would not be attracted in the instant case and the Tribunal in our opinion, was not right in holding that the notice issued under Section 271(1)(a) of the Act was a valid notice in the eye of law."*

11. On the strength of these judgments of the Hon'ble High Courts, the reopening of assessment is quashed.

12. Proceeding further, a perusal of the reasons for reopening assessment mentioned elsewhere clearly show that the Assessing Officer formed a belief that the income has escaped assessment on the strength of the said land falling within the municipal limits of municipal corporation of Gurgaon. This belief, per se, is factually

incorrect because Exhibit 191 clearly shows that the sale is outside the municipal corporation area.

13. Exhibit 198 is the application to the Teh. Sohna by which the assessee asked the Tehsildar for the information of the location of the land from the municipal limit and Exhibit 199 is the reply of the Tehsildar by which the Tehsildar categorically stated that the impugned land is beyond 10 ks, from the municipal corporation limit of Gurgaon.

14. At this stage, it is pertinent to mention that to measure the distance from the radius of municipal corporation, the relevant date would be the date of notification and the date of notification is 06.01.1994. It can be safely concluded that if on 26.11.2015 the distance was more than 10 kms as per the certificate of the Tehsildar, it can never be within 8 kms on the date of notification i.e. 06.01.1994. Therefore, the basis for reason to believe that income has escaped assessment is factually incorrect.

15. Since the impugned land was not an asset within the meaning of section 2(14) of the Act, there was no question of showing any capital gain in the return of income. This basis of reopening of the assessment is also invalid, which leads to the quashing of the assessment order. Moreover, the reasons recorded, as mentioned elsewhere, the AO has taken the cost of acquisition at Rs. 1 lakh as on 1.1.1980. We fail to understand under which provisions of the Act the AO has estimated the cost of acquisition of the land as on 1.1.1980.

16. Considering the totality of the facts in the light of the judicial decisions discussed hereinabove, we are of the considered opinion that notice issued u/s 148 of the Act is bad in law and the reassessment is liable to be quashed. We order accordingly and set aside the findings of the CIT(A) and quash the reassessment order so framed.

17. Since we have quashed the reassessment order, we do not find it necessary to dwell into the merits of the case.

18. Since we have allowed the appeal of the assessee, the Stay application filed by the assessee becomes otiose.

19. In the result, the appeal of the assessee in ITA No. 3375/DEL/2017 is allowed whereas the Stay Application has become otiose.

The order is pronounced in the open court on 11.05.2018.

Sd/-	**Sd/-**
[C.M. GARG]	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: **11th** May, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi