

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 101/JP/2018
निर्धारण वर्ष / Assessment Years : 2013-14

Sh. Sandeep Nijhawan, 112, Panchsheel Enclave, Durgapura, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax, Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AANPN 4037 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 27.03.2018.
घोषणा की तारीख / Date of Pronouncement : 28/03/2018.

आदेश / ORDER

PER: VIKRAM SINGH YADAV, AM

The appeal is filed by the assessee against the order of Id. CIT(A)-3, Jaipur, dated 11.12.2017 for the A.Y. 2013-14 wherein the assessee has challenged the action of Id. CIT(A) in confirming the addition of Rs. 5,89,759/- on account of unexplained investment in purchase of plot by not accepting the contention of the assessee that source of such investment is out of the undisclosed profession income declared by him during the course of survey.

2. Briefly the facts of the case are that a survey u/s 133A was conducted at the business premises of the assessee on 8.8.2012 and in the statement of the assessee recorded during the course of survey, the assessee has surrendered undisclosed investment in purchased of plot in name of his wife

amounting to Rs. 12,12,030/- and expected professional receipts of Rs. 27,84,000/- for the Financial Year 2012-13. In the return filed on 24.09.13, the assessee has disclosed professional receipts of Rs. 34,06,271/- as against Rs. 27,84,000 during the course of survey proceedings on 08.08.2012. However, the assessee has not offered any income on account of undisclosed investment of Rs. 12,12,030/- made in plot purchased in the name of his wife. A show cause notice was issued to the assessee and in response, the assessee submitted that the transaction relating to purchase of plot has been entered at the same price at which the transaction has taken place. The assessee has not made any payment over & above the agreement value. The assessee being a Doctor is not much aware of the tax provision. It was further submitted that no extra amount was paid by the assessee. However to avoid litigation and buy peace, the assessee has surrendered the difference amount between the DLC price and agreement price as his income of the current year. It was further submitted that during the year, the assessee has surrendered professional receipts of Rs. 27.84 lacs and the undisclosed investment in the plot of land is made out of the aforesaid income. It was submitted that the assessee has shown income of Rs. 34,06,271/- as against Rs. 27.84 lacs surrendered income during the course of survey. It was further submitted that the assessee has withdrawn an amount of Rs. 23,47,853/- which includes the aforesaid amount of Rs. 12,12,030/-. It was further submitted that the excessive professional receipt of Rs. 6,22,271/- is on

account of the aforesaid alleged investment and therefore no further addition is required to be made on this account. The submission so made by the assessee was not found acceptable to the AO except for the contention that the benefits to the extent of excessive professional receipts of Rs.6,22,271/- may be given to the assessee. It was held by the AO that the assessee's source of income is salary & professional income and obviously investment is made anywhere will be out of income from these sources. It was accordingly held that the undisclosed investment in purchase of plot is made by the assessee and for making this investment, source of Rs. 6,22,271/- is his professional receipts duly offered by the assessee. It was accordingly held that the source of balance money Rs. 5,89,759/- has not been explained by the assessee and therefore, the investment to that extent is made by the assessee from undisclosed income and same was brought to tax in the hands of the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the said addition and his findings are contained at para 4.3 of his order, which is reproduced as under:-

"4.3 I have carefully considered the observation made by the Assessing officer in assessment order, submission filed by the AIR and cited case law. I find that Assessing officer made the addition of Rs.5,89,759/- as unexplained investment in plot making detail observation in assessment order. The A/R of the appellant submitted that there is no dispute as to the

professional fees declared at Rs.34,06,271/- and investment in plot at Rs.12,12,030/-. Further the A/R of the appellant submitted that in survey assessee has surrendered income as well as investment. The income surrendered will become the source of the investment. Therefore, making separate addition for both of them will tantamount to double taxation.

This argument of the A/R of the appellant is not tenable because the appellant during the survey stated that his expected professional receipts are of Rs.27,84,000/-. This is not disclosure of undisclosed income but this is the regular expected receipt of the appellant in the year. Therefore there is no cases of double taxation. The appellant shown receipt of Rs.34,06,271/-. The Assessing officer already given the benefit of set off to extend of Rs.6,22,271/- (34,06,271 — 27,84,000). Therefore I am the view that addition made by the Assessing officer of Rs.5,89,759/- as unexplained investment is as per law. Hence I confirm the addition made by the Assessing officer of Rs. 5,89,759/- as unexplained investment in purchase of plot. This ground is not allowed.”

4. During the course of hearing, the Ld. AR has submitted that in survey assessee estimated the professional income for the year under consideration at Rs.27,84,000/- and accepted that he would declare such income in the return for AY 2013-14. He further stated that plot in the name of wife purchased during the year is registered at Rs.6 lacs though the sub registrar has valued it at Rs.18,12,030/- for stamp duty purpose. He accepted that actual consideration is Rs.18,12,030/- and thus, offered Rs.12,12,030/- for tax which he stated to be out of income other than the professional receipts. Thus, the assessee offered both the income as well as investment. However, while filing the return assessee declared professional receipt at Rs.34,06,271/- but did not offer any income on account of unexplained investment in the plot for the reason that no such investment is made.

5. It was submitted that in course of assessment proceedings, assessee vide letter dt. 29.01.2016 explained at Point No. 14 that actual consideration paid for purchase of plot is only Rs.6 lacs. No extra amount was paid. No evidence for such payment was found in survey also but being a doctor by profession and to avoid litigation & buy piece of mind, he surrender the difference between the stamp value and actual consideration. Alternatively, it was stated that he has made withdrawal of Rs.23,47,853/- from his capital account and therefore, the alleged payment of Rs.12,12,030/- is covered by such withdrawal. It was further claimed that otherwise also, assessee has declared professional income of Rs.34,06,271/- against the income estimated in survey at Rs.27,84,000/- and therefore, the differential amount of Rs.6,22,271/- should be considered against the alleged investment. The AO accepted this contention and thus, made addition of Rs.5,89,759/- which is also confirmed by Ld. CIT(A).

6. It was submitted that it is settled law that the statement recorded in survey has no evidentiary value. The Hon'ble Supreme Court in case of CIT Vs. S. Khader Khan Son 352 ITR 480 has held that section 133A does not empower any income tax authority to examine any person on oath and thus any such statement has no evidentiary value. In the present case, there is no evidence that any extra consideration is paid by the assessee in respect of the plot purchased by his wife. Hence, solely on the basis of statement recorded in survey, the part addition made by the AO and confirmed by Ld. CIT(A) is bad in law and the same be deleted. In view of above, the addition confirmed by Ld. CIT(A) be deleted.

7. The Id DR is heard who has vehemently argued the matter and relied on the order of the lower authorities.

8. We have heard the rival submissions and pursued the material available on record. Firstly, we find that there is no material on record except statement of the assessee recorded during the survey which proves that the assessee has invested the said amount over and above the declared value in the sale agreement. The amount has been worked out based on difference between the DLC value and actual sale consideration. Further, the AO has given a finding that assessee's source of income is salary and professional income and the investment has been made out of these sources itself. During the year under consideration, the assessee has disclosed professional receipts of Rs 34,06,271 and has submitted that out of said professional receipts, he has withdrawn an amount of Rs 23,47,853 from his bank account which again is not in dispute. Given that the assessee's contention that the investment of Rs 12,12,030 is out of such withdrawals cannot be disputed in absence of anything contrary on record. In light of the same, the addition of Rs 5,89,759 is hereby deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 28/03/2018.

Sd/-
(श्री विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य /Accountant Member

Jaipur

Dated:- 28/03/2018.

Pooja/

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

1. The Appellant - Sh. Sandeep Nijhawan, 112, Panchsheel Enclave, Durgapura, Jaipur.
2. The Respondent – DCIT, Circle- 7, Jaipur.
3. The CIT.
4. The CIT (4),
5. The DR, ITAT, Jaipur

6. Guard File (ITA No. 101/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar