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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 450/2019

THE PR. COMMISSIONER OF INCOME TAX -3 ..... Appellant

Through: Mr. Ruchir Bhatia, Adv.

Versus

LATE DR. A.H. RIZVI ..... Respondent

Through: Ms. Rashmi Chopra, Ms. Fiza Chopra, Mr. Puneet Rathi & Ms. Ananya Chopra, Advs.

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Through: Mr. Ruchir Bhatia, Adv.

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LATE DR. A. H. RIZVI (LEGAL HEIR- SMT. AFRIN RIZVI) ..... Respondents

Through: Ms. Rashmi Chopra, Ms. Fiza Chopra, Mr. Puneet Rathi & Ms. Ananya Chopra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **23.01.2024**

1. These two appeals have been preferred by the Revenue assailing the validity of the order dated 20 December 2017 passed by the Income Tax Appellate Tribunal ["**ITAT"]** partly allowing the appeal preferred by the respondent assessee while dismissing the appeals preferred by the appellant before us.

2. The appeals themselves emanate from an order of assessment dated 13 December 2003 framed by the Assessing Officer **["AO"]** under Section 158BC of the Income Tax Act, 1961 **["Act"]** and in terms of which an addition of Rs.94,52,393/- was made on account of

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undisclosed investments in agricultural land as well as an addition of Rs.1,64,59,981/- with respect to undisclosed investment in jewellery.

3. Aggrieved by the aforesaid assessment, the respondent preferred an appeal before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] which came to be partly allowed.

4. Dealing with the first addition, the CIT(A) reduced the addition to Rs. 33,15,399/- on the following reasoning:-

> "5.12 This addition has been made by the A.O. by taking the land holding as given by revenue authorities to ADIT(Inv.) Saharanpur. However, as I have already held that the appellant has been successful in establishing that one pucca bigha is equivalent to 3 kaccha bigha. Therefore, I feel there is no justification in taking the holding of land at 280 bighas. I have already held above that the land holding will be considered in the hands of the appellant only of the areas as mentioned in the Regd. sale deeds which have been seized during the assessment proceedings. The addition has been made by the A.O. after subtracting 87 bighas from 280 Bighas and multiplying it by Rs. 21,000/- i.e. the circle rate. The seized documents i.e. A-12/41 and A-20/40 give graphic details of the money involved in the transactions of the purchase of land at Vill. Bhaguwala. Even if the circle rate as mentioned in the sale deed is adopted the addition confirmed by me of Rs. 33,00,000/- will be sufficient to cover the investment made by the appellant. Therefore, no further addition on account of undisclosed investment in the land is called for and the addition made by the A.O. of Rs. 40,53,000/- is deleted.
>
> 5.13 Another addition made by the A.O. is of Rs. 20,83,994/- on account of land holdings as appearing in the sale deeds pertaining to the appellant his son and daughter and his two relatives i.e. Smt. Jamila Begum and Smt. Aquila Begum. This addition has been made by the A.O. on the basis of circle rates as given in the sale deeds itself. I have already upheld the addition of Rs.33,00,000/- made on the basis of seized documents i.e A-20/40 and A-12/41. The transactions recorded on these pages relate to purchase of the same agriculture land. Therefore, no further addition on account of purchase of land is called for as it will tenamount to double addition. Therefore, the addition made by the A.O. of Rs. 20,83,994/- is deleted."

5. Insofar as the additions made with respect to undisclosed investment in jewellery was concerned, the CIT(A) accepted the

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challenge of the assessee and deleted that addition in toto on the basis of the following observations:

> "7.6 In view of foregoing discussion I am of the opinion that addition made merely on the basis of jottings in the seized papers is not justified as the AO has to bring some corroborative evidence to show that these jotting/entries actually show some transaction and that the assessee has made investment in purchase of jewellery which is not disclosed to the department. The AO can tax only that expenditure which is proved to have been incurred by the assessee and the same is out of undisclosed sources. The AO has not brought any corroborative, evidence on record to justify the addition made by him. In these circumstances, I have no option but to delete the addition of Rs 1,64,59,981/-made by the AO. This ground of appeal is allowed."

6. Both the assessee as well as the appellant before us, thereafter approached the ITAT. As is evident from the recordal of facts in the impugned order, the Revenue had raised the following grounds before the ITAT:-

> "2. We will first take up the cross appeals of late Dr. A.H. Rizvi. In the grounds of appeal, the revenue has taken following grounds:-
>
> 1. "On the facts and circumstances of the case the Ld. CIT (A) has erred in reducing the addition from Rs.94,52,393/- to Rs.33,15,399/- made on account of undisclosed investment in agriculture land & farm house at village Bhagoowala Saharanpur.
> 2. On the facts and circumstances of the case the Ld. C.I.T.(A) has erred in deleting the addition of Rs.1,64,59,981/- made on account of undisclosed investment in jewellery.
> 3. On the facts and circumstances of the case, the Ld. C.I.T.(A) has erred in reducing the addition of Rs.44,99,006/- to Rs.27,99,954/- made on account of undisclosed investment in Farm house at Village Fatehpur Beri, Chattarpur, Mehrauli, New Delhi on the basis of seized material.
> 4. On the facts and circumstances of the case the Ld. C.I.T.(A) has erred in deleting the addition of Rs.10,40,100/- made on account of undisclosed income being perquisite value of rent free accommodation on the basis of seized material."

7. The assessee in its appeal had raised the following issues as would be evident from a reading of para 32:-

> "32. Now we will take up assessee's appeal vide which

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following grounds have been raised:-

On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) was not Justified:-

1. in upholding the action of search & seizure carried out by the Department u/s 132 of the Act;
2. in upholding the issuance of notice u/s 158 BC of the Act;
3. in confirming the time-barred order u/s 158BE of the Act;
4. in upholding the proceedings as valid and not violative of the principle of natural justice;
5. in confirming the action of the Assessing Officer in searching the three lockers at IOB, PNB and SBI and initiating and carrying out consequential proceedings even though no search warrants were issued in respect thereto;
6. In confirming the following additions made to the returned income:
(i) Rs. 36,15,399/- on account of alleged investment in agricultural land and farm house in district Saharanpur;
(ii) Rs 5,23.445/ - on account of alleged unexplained cash although the same was as per books of account found at the time of search;
(iii) Rs. 25,58,786/- out of Rs. 44,99,006/ - on account of alleged investment/expenditure in the farm house at village Fatehpur Beri, Mehrauli;
(iv) Rs.1,58,027/- on account of power line in farm house at Bhagoowala, Saharanpur;
(v) Rs.1,00,000 on account of alleged purchase of gypsy.
7. In confirming the initiation of penalty proceedings u/s 158BFA(2) of the Act."

8. It becomes relevant to note that before the ITAT, ground nos. 1 to 5 as well as 6(iv) and (v) were not pressed by the assessee. Similarly, insofar as ground no.6(i) is concerned, the assessee has accepted the order of the ITAT.

9. The additions which were made with respect to undisclosed income in agricultural land have been dealt with by the ITAT in some detail as would be evident from the following:-

"16. After considering the rival submissions and on perusal of the relevant material referred to before us as noted above, out of 16

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sale deeds, sale deeds pertaining to 5 Bighas 10 Biswas and 4 Bighas belong to Ms. Jamila Begum and Ms. Aquila Begum who are close relatives of the assessee. Once during the course of search a document pertaining to third person has been found which clearly mentions that these two persons are owners of the land whose names are appearing in the sale deed and during the course of assessment proceedings they have not only owned up the ownership of said land that it belongs to them, but also have mentioned that it is out of their own source of income, then the source of their investment should have been examined in their hands. Though they may not have been able to adduce the source of income by giving any evidence, but so far as the assessee is concerned, the presumption cast upon him in terms of section 132 (4A) stands discharged, *firstly,* for the reason that the document does not contain the name of the assessee, *albeit* the owner of the document are other persons; and *secondly,* these two persons have owned up the document. Thus, at this stage itself the onus has shifted to the department and the revenue should have inquired from these two person as to what is the source of investment in the said land and the right course would have been to initiate proceedings u/s 158BD which provision is applicable under these circumstance, because if the undisclosed income belongs to any person other than the persons searched, then law envisages that the proceedings u/s 158BD has to be separately initiated as laid down in the said section. Thus, we hold that so far as the value of these two sale deeds for purchase of land cannot be considered in the hands of the assessee or any other addition on account of undisclosed income can be made. Accordingly, to the extent of Rs. 13,34,280/- cannot be added and same is directed to be deleted from the hands of the assessee.

17. Now so far as the other additions are concerned which have been partly confirmed and partly deleted by the Ld. CIT (A), as discussed in para 5.8 to 5.10 of the appellate order (as incorporated above), we do not find any reason to deviate from the finding of the Ld. CIT (A) as it is not only based on correct appreciation of facts but also the entire material on record which is in accordance with the law. Thus, the other additions which have been deleted by the Ld. CIT (A) specifically on account of enhancing the measurement of land from 90 Bigha to 280 and thereby valuing the same differently and part of the investment which has been accepted in the construction of the farm house and tube well is upheld. Accordingly ground No.1 of the revenue is dismissed and part of the ground no. 6.1 of the assessee is also allowed."

10. We note that the additions principally had been made on the basis of certain documents pertaining to third persons and the AO

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taking the view that those were liable to be taxed as investments made by the assessee in his own hands. This presupposed those instruments being sufficient for the purposes of initiating action in terms of Section 132(4A) and Section 158BC of the Act. The ITAT has however noted that the documents pertaining to immovable property were in the name of persons other than the assessee who had acknowledged the transactions embodied therein. This position was not disputed even before us. It is in the aforesaid backdrop that the ITAT has observed that once those instruments had been duly acknowledged and accepted by the persons in whose favor the transactions were stated to have been made, there existed no justification for additions being made in the hands of the assessee. The ITAT has, in our considered opinion, rightly come to conclude that bearing in mind the stand that was taken by the beneficiaries under those instruments before the AO, the presumption as cast upon the assessee stood duly discharged.

11. We additionally take note of the fact that insofar as the beneficiaries mentioned in those instruments are concerned, the Act empowered the AO to independently proceed against them by virtue of Section 158BD of the Act. In view of the aforesaid, we find no merit in the challenge raised by the appellants insofar as this aspect is concerned.

12. While proceeding to partly allow the appeal of the assessee and referable to ground no.6(i), the ITAT had observed as follows:-

> "34. So far as ground No. 6(i) is concerned, we have already discussed this issue in detail while dealing the same in the revenue's appeal vide ground No. 1. Out of the total aggregate addition of Rs. 94,52,393/-, partly has been confirmed by the Ld. CIT(A)and partly has been deleted. So far as the addition deleted by the Ld. CIT (A) the same has been affirmed by us in the

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Revenue's appeal. However, with regard to addition on account of investment in the purchase of land standing in the name of two relatives, i.e., Smt. Jamila Begum and Smt. Aquila Begum for sums aggregating to Rs. 13,34,2801-, we have already deleted the said addition on the ground that, *firstly,* that in the seized documents itself the name of the owner of the land is appearing which goes to show that land belongs to these two persons; and *secondly,* during the course of assessment proceedings these persons have owned up the property and also filed their sworn affidavits. Thus, the onus upon the assessee on the documents found at his residence/premises stands discharged and AO, if at all, should have invoked the proceedings u/s 158BD in this case or should have asked about the source of their investment in the said land. Without any inquiry, adverse presumption cannot be drawn in the case of the assessee that investment made by these two ladies who are independent persons, belongs to the assessee or investment has been done by the assessee out of his undisclosed sources. Thus, ground No.6(i) is partly allowed."

13. The ITAT has thus in our considered opinion rightly come to conclude that the additions would not sustain once it had been established that the transactions forming subject matter of the instruments which were discovered pertained to two individuals other than the assessee and who had duly owned up and accepted those transactions in the course of assessment.

14. Insofar as deletion by the CIT(A) of Rs.1,64,59,981/- with respect to undisclosed investment in jewellery was concerned, the ITAT has observed the following:

25. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as material placed on record. The entire basis of addition is based on certain loose papers and bills for the purchase/payment of jewellery found from the residence of the assessee. Each and every documents and paper have been explained by the assessee, the relevant portion of which have been incorporated by us in the foregoing paragraphs. Some of the seized documents contained some rough calculation and some of them are in the form of bills of one jeweller, Champalal Jewellers. The assessee's contention has been that assessee's wife's sister, Dr. Afroz Rehman who herself is a medical doctor and citizen of USA had come to India for marriage of her daughters and during her visit, she had made purchases or renovated old

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jewellery. She had also filed her affidavit that the jewelleries have been purchased by her and some of the documents were just rough calculation and noting and some of the jewelleries have given for approval and returned back which has been mentioned in the said seized documents itself. One very important fact which is noteworthy is that all the jewellery items as per the description made in the seized documents were never found from the premises of the assessee and if the assessee has purchased the jewellery worth of Rs. 1.64 crores in the year 2000, then it would have been a huge amount of jewellery (more than 37 kgs at then prevailing rate of gold) which must have been found from the possession of the assessee when a global search has been carried out at all the places including bank locker, residence, farm house and office. None of such items of jewelleries have been found barring jewellery valuing Rs. 66.17 lacs which has been separately considered in the hands of the assessee's wife. In support of this contention that Dr. Afroz Rehman had come to India, photocopy of her passport, photocopy of marriage invitation card of her daughter alongwith her affidavit was filed, wherein she has stated that she has purchased jewellery from Champalal Jewellers worth Rs. 10 lacs. Other notings have been stated to be rough calculation or jewellery purchased for approval which has been returned. Further one important fact which has been noted by the Ld. CIT (A) is that the calculations for the purchase of jewellery if is divided by Rs. 44, which was then prevalent exchange rate of INR against the US dollar which is appearing at several places, he held that it will go to show that the said transaction was undertaken by Smt. Afroz Rahman who is a US citizen. Based on these facts and documents, we do not find any discrepancy or reasons to deviate from the order of the Ld. CIT(A)and therefore, same is affirmed. Accordingly, ground no. 2 raised by the revenue is dismissed."

15. In view of the aforesaid facts, we find no merit in the challenge as raised. The appeals in any case fail to raise any substantial question of law which would merit consideration. The appeals fail and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 23, 2024/neha

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