

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR(SMC).**

BEFORE SH. A.D. JAIN, JUDICIAL MEMBER

ITA No.87(Asr)/2016
Assessment year:2011-12
PAN:BRTPK1192A

Smt. Gurpreet Kaur,
H/No.812, Rishi Nagar,
Jalandhar.
(Appellant)

vs. Income Tax Officer,
Ward III(4),
Jalandhar.
(Respondent)

Appellant by:Sh. J.S. Bhasin, Advocate
Respondent by: Sh. Tarsem Lal, DR

Date of hearing: 22/03/2016
Date of pronouncement: 24/03/2016

ORDER

This is the assessee's appeal for the assessment year 2011-12, against the order, dated 12.01.2016, passed by the Id. CIT(A), Jalandhar.

The assessee has raised the following grounds of appeal:

- “1. That Id. CIT(A) has grossly erred in rejecting the assessee's contention that the ITO had violated the CBDT Instructions dated 08.09.2010 governing AIR cases, while passing the impugned assessment ex-parte, without first meeting the objection taken by the assessee, and as such, the order impugned was liable to be quashed.
2. That the Id. CIT(A) has erred in holding that the order passed by the ITO was neither in violation of CBDT instructions dated 08.09.2010 nor of natural justice and that were the objections taken by assessee just to divert the attention of the AO to come to a logical conclusion.

3. That without prejudice to above legal grounds, the ld. CIT(A) further erred in sustaining the addition of Rs.3,00,000/-, as made by the ITO by treating the 'biana' received against first sale deal of property, to have been forfeited.
 4. That while confirming the above addition of Rs. 3 lacs, the ld. CIT(A) was not justified in disbelieving the 'compromise deal' reached with the first party, as an afterthought.
 5. That likewise, the ld. CIT(A) also erred in confirming the denial of exemption under section 54 to the extent of Rs.11,92,500/- being the cost of plot purchased on a wholly erroneous construction of the provisions of section 54/54F.
 6. That most relevant and binding judicial authorities, cited before the ld. CIT could not have been bypassed simply to reject all contentions raised by assessee.
 7. That the assessee having been put to undue harassment of the authorities below, by taking arbitrary stands contrary to binding CBDT instructions and also the judicial precedents, she seeks to be allowed appropriate cost in the matter.”
2. The facts are that the AO issued a notice (APB-8) dated 21.09.2012 to the assessee, seeking information in connection with the return of income submitted by the assessee on 17.10.2011, for the year under consideration. The assessee was asked to produce documents, accounts and any other evidence on which the assessee might rely in support of the return filed by her. The said notice is marked “AIR Only”.
3. Thereafter, the AO issued to the assessee, a notice (APB-9) dated 15.07.2013 under section 142(1) of the Act, asking the assessee to produce accounts/or documents and information as per the questionnaire (APB-10) accompanying the said notice, as follows:

“In connection with your assessment year 2011-12, you are requested to file the following information, details and evidence in support to your claim:

1. Nature of business.
2. Statement of liabilities and assets as on 01.04.2010 to 31.03.2011.
3. History of the family with complete details of month wise withdrawal for household expenses in your name and in the name of your wife/Husband and family members.
4. Details of education expenses of your children.
5. Electricity meter no. alongwith details of expenses on electricity.
6. Details of telephones installed at your residence as well as on business premises with details of expenses on telephones.
7. Details of bank accounts in your name, in the name of your husband and children in the following proforma:-

| Sl.No. | Name of the bank with address | Account Number |
|--------|-------------------------------|----------------|
| | | |

8. Whether you have any FDR, NSC, Post Office Account in your name, in the name of your family members? If so, file the details of the same.
9. Whether your wife/husband is an existing assessee? If so, the photocopy of return alongwith its enclosures.
10. Details of properties sold /purchased (including agreements if any made but not matured) during the year under consideration. Submit the copy of agreement/registered deeds.
11. As per information available in this office you have made cash deposits of Rs.50,00,000/- in your saving bank account. Please furnish the source of cash deposit along with evidence.”

4. Vide reply (APB 11-12) dated 21.08.2013, the assessee stated that the questionnaire dated 15.07.2013 was seeking information with evidence on various issues not covered by the AIR information, though

the first notice dated 21.09.2012 was marked "AIR Only", whereas as per CBDT Guidelines/Instruction bearing F.No.226/26/2006-ITA.11(Pt.) (APB-15) dated 08.09.2010, scrutiny of cases selected on the basis of information received through the AIR returns would be limited only to aspects of information received through AIR.

5. In response to the AO's query, (Question no.11 of the Questioner), regarding the source of the alleged cash deposit of Rs. 25 lakhs in the assessee's savings bank account with O.B.C, the assessee stated that she had sold her residential house for Rs.32.25 lakhs on 15.05.2010 and the proceeds thereof, i.e., Rs. 7 lakhs received by cheque and Rs.25.25 lakhs by cash were deposited in her savings bank account with O.B.C. In support, she filed a copy of the sale deed (APB 13-14) and a copy of her saving bank account with OBC [APB 17 (back) to 18].

6. In the assessment order, the AO observed as follows:

"3.1 The assessee has declared the capital gain of Rs.18,30,652/- which was claimed exempted u/s 54 of the Income Tax Act, 1961. The assessee purchased a plot for Rs. 11,92,500/- plus stamp duty of Rs.83,475/- on 28.07.2009 and also invested Rs.6.5 Lacs on 29.07.2011, in the Capital Gain Scheme with the oriental Bank of Commerce, Jalandhar. During the course of assessment proceedings, the assessee filed another agreement to sell the same property (House No. 13/2 situated in area o, Green Model Town) to Smt. Balbir Kaur W/o Sh. Balwinder Singh R/o 11.No. 359-13, St. No.13, Jaswant Nagar, Jalandhar and Smt. Kamaljit Kaur W/o Sh. Lakhwinder Singh R/o 11.No. 76 Golden Avenue, Jalandhar. The assessee also received Rs.3,00,000/- at the¹ lime of agreement and Rs. 9,00,000/- had to be received by 15.07.2009, as advance. The balance amount had to be received at the lime of registration deed and the date fixed for registration was fixed 05.10.2010. The

assessee vide this office letter dated 13.12.2013 was requested to produce Suit. Balbir Kaur W/o Sh. Balwinder Singh and Smt. Kamajit Kaur W/o Sh. Lakhwinder for examination. The counsel of the assessee vide letter dated 27.12.2015 again explained that as per CBDT guidelines/instruction bearing F.No. 224/26/2006 ITA. 11 (Pt.) dated 08.09.2010 scrutiny of such cases was limited only to the aspect of information received through AIR. The present proceedings limited to extent of AIR information.

3.2. Keeping in view the above reply of the assessee, it is clear that the assessee is not ready to furnish the requisite information. Thus it is evident that the plot purchased in the earlier year does not have not any relation with the residential house sold during the Financial Year 2010-11, and the exemption claimed u/s 54 of the Income Tax Act, 1961, amounting to Rs.11,92,500 has wrongly been claimed, as exemption is only allowable for purchasing or constructing a residential house and not for purchase a plot. Since the plot does not qualify for exemption u/s 54 of the Income Tax Act, 1961, the claim of the assessee for purchase of plot for Rs.11,92,000/- is rejected. I hereby make the addition of Rs.11,92,000/- in the calculation of LTCG of the assessee.

3.3 Further it is noticed that the assessee had entered into an agreement for sale of same property i.e. 1372, Green Model Town, Jalandhar with Smt. Balbir Kaur W/o Sh. Balwinder Singh R/o H. No. 359-B, St. No.13, Jaswant Nagar, Jalandhar and Smt. Kamaljit Kaur W/o Sh. Lakhwinder Singh R/o H. No. 76 Golden Avenue, Jalandhar on 15.03.2009. The copy of agreement is placed on record. As per this agreement the assessee had received initial amount of Rs.3 lacs on 15.03.2009. The assessee was called upon to produce the vendees-of the said agreement for their examination in order to ascertain whether the agreement was finalized or cancelled, since the assessee has failed to clarify this aspect. Thus in the absence of assessee's compliance to produce the vendees of the agreement, it is presumed that this agreement could not gain finality, because the same property was sold by the assessee to somebody else by way of sale deed dated 07.05.2010. Thus the amount of advance taken by the assessee to the tune of Rs. 3,00,000/- on 15.03.2009, still remain with the assessee which stand forfeited and it forms part of the assessee's total receipt/sale consideration of the property in question as per the provisions of section 51 of the Income Tax Act, 1961."

7. The AO thus computed long term capital gain as follows:

| | |
|---|---|
| Sale consideration as per registered deed dated 07.05.2010. | 32,25,000/- |
| Add forfeited Biana as per Agreement dated 15.03.2009. | <u>3,00,000/-</u> |
| Total sale consideration of the property to compute the capital gain. | 35,25,000/- |
| Less cost of acquisition of property. | 5,24,508/- |
| Less Indexed cost of improvement as Total cost of acquisition. | <u>8,69,840/-</u> <u>13,94,348/-</u> |
| Balance. | 21,30,652/- |
| Less Deposit in the Capital Gain Scheme | <u>6,50,000/-</u> |
| Balance Taxable Capital Gain | 14,80,652/- |

8. The AO refused to grant benefit of section 54 of the I.T. Act, 1961.
9. The Id. CIT(A) upheld the assessment, holding as follows:

“5.2. I have carefully considered the submissions of the assessee as made by her vide letter dated 23.11.2015 on the issues under reference. I have also considered various judicial pronouncements relied upon by the assessee in connection with the issue under reference. In my opinion, the AO has not violated the instructions issued by the CBDT governing AIR cases in any way as he has limited his enquiries to the source of cash deposits in the bank account of the assessee and further logical conclusion. I am also of the opinion that although the cash deposits in the bank account of the assessee were found to be explained with the help of sale proceeds of house property but the AO is also duty bound to see whether the assessee has correctly declared taxable value of the long term capital gains from the sale of her residential house while filing the return of income. In my further opinion, the AO has done nothing wrong in the case of the assessee as he has computed the long term capital gains as per provisions of law. I am also of the opinion that the objections raised by the assessee during assessment proceedings were just to divert the attention of the AO to come to a logical conclusion. Moreover, the assessee should not have any grudge as the AO framed the assessment as per provisions of law after allowing proper opportunity of being heard and restricting his enquiries to the issue under reference. I am also of the opinion

that the judicial pronouncements relied upon by the assessee have altogether different facts from the facts of the case of the assessee and have no application in the case of the assessee. In the result, the grounds No. 1, 2 and 3 of appeal taken by the assessee are dismissed.”

10. The ld. counsel for the assessee has contended that the ld. CIT(A) has grossly erred in rejecting the assessee's contention that the AO had violated the CBDT instructions dated 08.09.2010 governing AIR cases, while passing the impugned assessment ex-parte, without first meeting the objection taken by the assessee and as such, the assessment order was liable to be quashed; that the ld. CIT(A) has also erred in holding that the order passed by the AO was neither in violation of the CBDT instructions dated 08.09.2010, nor of natural justice and that the objections taken by the assessee were just to divert the attention of the AO to come to a logical conclusion.

11. The ld. DR, on the other hand, strongly relied on the impugned order.

12. It has been contended that evidently, the AO has not violated the CBDT instructions governing AIR cases, since he has limited his enquiries to the source of cash deposits in the in the bank account of the assessee and it is further a logical conclusion, that as correctly observed by the ld. CIT(A), the AO was duty bound to see as to whether the assessee has correctly declared taxable value of the long term capital gains from the sale of her residential house; that the long term capital gain was correctly computed by the AO in accordance with law; and that

the assessee has not been able to successfully dispute the observation of the Id. CIT(A) that the assessee had raised objection just to divert the attention of the AO to arrive at a logical conclusion.

13. The question is whether, firstly, the AO is bound by the CBDT Instruction F.No.225/26/2006-ITA-II(Pt.) dated 08.09.2010 and as to whether in the present case, while computing capital gain and denying benefit of section 54 to the assessee, the AO has contravened the said instructions, thereby rendering the assessment order invalid; and secondly, as to whether the Id. CIT(A) is correct in upholding the assessment order.

14. Section 119(1) of the Act reads as follows:

“The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.”

15. In ‘Crystal Phosphates Ltd. vs. ACIT’, 34 CCH 136 (Del. Trib.), it has been held that once the CBDT had issued instructions, the same have to be followed in letter and spirit by the AO.

14. In ‘Amal Kumar Ghosh vs. Addl. CIT’, 361 ITR 458 (Cal.), it has been held that when the department has set down a standard for itself, the department is bound by that standard and it cannot act with discrimination.

15. No decision contrary to the above decisions has been filed.
16. Thus, evidently, the Income Tax Authorities are bound to observe and follow the instructions of the Board. The operative word in section 119(1) is 'shall'. Judicial decisions have recognized this position.
17. In the present case, the assessee's case was picked up for scrutiny on the basis of AIR information. The notice dated 21.09.2012 (supra) was stamped with 'AIR Only', in compliance with para 3 of the CBDT instruction (supra) dated 08.09.2010.
18. The CBDT Instruction dated 08.09.2010, for facility, is reproduced as under:

F.No.225/26/2006-ITA.II (Pt.)
Government of India,
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes,

New Delhi, dated the 8th September, 2010

To
All Chief Commissioners of Income Tax,
All Directors General of Income Tax,

Sir/Madam,

Subject: Selection of cases for scrutiny on the basis of data in AIR returns and subsequent assessment proceedings-regarding.

Reference is invited to Board's letter of even number dated 23rd May, 2007 regarding scope of enquiry in the scrutiny cases selected only on the basis of information received through the AIR returns.

2. The above mentioned guidelines have been reconsidered by the Board and it has been decided that the scrutiny of such cases would be limited only to the aspects of information received through AIR. However, a case may be taken up for wider scrutiny

with the approval of the administrative Commissioner, where it is felt that apart from the AIR information there is a potential escapement of income more than Rs. 10 Lacs.

3. It has also been decided that in all the cases which are picked for scrutiny only on the basis of AIR information, the notice u/s 143(2) of Income Tax Act 1961 should clearly be stamped with "AIR Case".

This should be immediately brought to the notice of all the officers working in your region.

Yours faithfully,

(Ajay Goyal)

Director (ITA.II)"

19. As per the table at page-1 of the AO, the AIR information was regarding transaction of Rs. 25 lakhs dated 31.3.2011 (Entry No.2 in the table is, as stated, merely a repetition of Entry No.1). According to para-3 of the assessment order, the details of this are deposits of Rs.9.5 lakhs on 07.05.2010, Rs.9.5 lakhs on 08.05.2010 and Rs. 6 lakhs in cash by the assessee in her savings bank account with OBC, Jalandhar.

20. Para 2 of the CBDT Instruction states that the scrutiny of cases selected on the basis of information received through AIR returns would be limited only to the aspects of information received through AIR.

21. As seen, the AIR information in the present case was regarding cash deposits of Rs. 25 lakhs by the assessee in her savings bank account with OBC. Meaning thereby, that the assessee was required to

explain the source of such cash deposits. The assessee explained the same as sale proceeds of her residential house amounting to Rs.32.25 lakhs received from Smt. Naunihal Kaur, the purchaser. Her this assertion was duly supported by a copy of the concerned sale deed.

22. Now, as per the CBDT Instruction, nothing further was to be gone into by the AO, since the information received through AIR was the cash deposits. However, the AO as noted in paras 3.1 & 3.3 of the assessment order itself asked the assessee vide letter dated 13.12.2013 to produce Smt. Balbir Kaur and Smt. Kamaljit Kaur, with whom the assessee had entered into a separate agreement to sell and from whom, the assessee had received a sum of Rs. 3 lakhs at the time of agreement “for their examination in order to ascertain whether the agreement, was finalized or cancelled”. The AO observed that this proceedings was limited to the extent of the AIR information.

23. Evidently, the matter of the other agreement to sell does not stand covered in the AIR information, which was regarding the cash deposits of Rs. 25 lakhs, which the assessee had adequately explained, as above. So, it was obviously not within the purview of the AO to ask the assessee to produce Smt. Balbir Kaur and Smt. Kamaljit Kaur, or to make addition of Rs. 3 lakhs, as was done.

24. The assessee, as per para 3.1 of the assessment order, had purchased a plot for Rs.11,92,500/- plus stamp duty of Rs.83,475/- on 28.07.2009. Since the assessee did not produce the two ladies for examination, the AO held that the plot purchased did not have any relation to the house sold and thus, the assessee had wrongly claimed exemption under section 54 of the Act. The AO made addition of Rs.11,92,000/- in the calculation of the assessee's long term capital gains.

25. This, again, does not come within the AIR information, which is, to reiterate, with regard to the cash deposits of Rs. 25 lakhs.

26. So, these latter enquiries by the AO are not aspects of the information received through AIR. The only aspect of such information was the source of the cash deposits, which stands adequately explained by the assessee, as above.

27. In fact, what the AO did was to widen the scrutiny. Now, para 2 of CBDT Instruction is specific when it states that where it is felt that apart from the AIR information, there is potential escapement of income more than Rs. 10 lakhs, the case may be taken up for wider scrutiny with the approval of the administrative Commissioner.

28. So, the proper course for the AO before making these additional enquiries would have been to take approval from the administrative Commissioner to widen the scrutiny. This, however, was not done and therefore, the action of the AO is violative of the CBDT Instruction.

29. Apropos the ld. CIT(A)'s order, obviously the ld. CIT(A) has erred in confirming the assessment order. The ld. CIT(A) had erred in view of the above observation of the Bench, in holding that the AO has not violated the CBDT Instruction. The ld. CIT(A) has gone wrong in observing that the AO has limited his enquiries to the source of cash deposits. True, the AO is duty bound to see whether the assessee has correctly declared taxable value of the long term capital gains from the sale of her residential house. However, as noted, in a case like the present one, where it has been picked up for scrutiny on the basis of the AIR information, the CBDT Instruction has to be strictly abided by. Herein, since the AIR information was only with regard to cash deposits of Rs. 25 lakhs and the assessee had duly and adequately explained the source thereof, the AO, it cannot be gainsaid, transgressed his competency in issuing the further query and in asking the assessee to produce Smt. Balbir Kaur and Smt. Kamaljit Kaur, the executants of the other agreement to sell which had nothing to do with the cash deposits. Moreover, it cannot, in view of the above discussion, at all be said that the objections raised by the assessee were merely to divert the attention of the AO to come to a logical conclusion. The objections taken by the assessee are well raised and the AO, at the cost of the repetition, could not have gone beyond the specific CBDT Instruction.

30. For the above, finding merit in the grievance sought to be raised by the assessee by way of Ground Nos. 1 & 2, the same are accepted. It

is held that since the assessment order, passed ex-parte by the AO, was in violation of specific CBDT Instruction, the same is not legally sustainable. The same is accordingly reversed.

31. Accordingly, nothing else remains ripe for adjudication and all the remaining grounds are rendered merely academic.

32. In the result, the appeal is allowed. No costs.

Order pronounced in the open court on 24/03/ 2016.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Dated: 24/03/2016

Copy of the order forwarded to:

1. The Assessee: Smt. Gurpreet Kaur, Jalandhar.
2. The ITO Ward III(4), Jalandhar.
3. The CIT(A), Jalandhar.
4. The CIT, Jalandhar.
5. The SR DR, ITAT, Amritsar.

True copy
By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.