

Sec. 69 addition was justified if sale deed showed that assessee paid cash consideration to purchase property

Summary – The Delhi ITAT in a recent case of Mahendri Devi, (the Assessee) held that When assessee claimed that as per family settlement, property was transferred in her name without monetary consideration but sale deed clearly showed that assessee had paid consideration in cash, said investment of assessee be treated as unexplained investment

Where AO issued notice under section 143(2) to assessee for assessment year under appeal and same had been served upon assessee within period of limitation, merely because AO had mentioned earlier assessment year in said notice, it could not be treated as invalid in law

Facts

- The assessee had purchased an immovable property during the year under consideration but had not offered same in her return. The action under section 147 was taken by recording the reasons and notice under section 148 was served upon assessee through registered speed post on 28-2-2015.
- Assessee in response to the notice under section 148 filed her return of income showing the *nil* income.
- The assessee submitted that as per family settlement, the property under consideration was transferred in the name of assessee, which was earlier in the name of her son and it was transferred without consideration.
- Reply of the assessee was not found plausible by the Assessing Officer as it was clearly mentioned in the sale deed that property had been purchased for a consideration of Rs. 20,00,000 against which payment was made in advance in cash and stamp duty was paid on circle rate of the property.
- The Assessing Officer reproduced the sale deed and noted that the monetary transaction was involved while purchasing the property and, therefore, treated the investment in purchase of property as unexplained investment under section 69 and addition was made in the hands of the assessee.
- The assessee contended that no notice under section 143(2) was issued by the Assessing Officer, therefore, reassessment was liable to be quashed.

Held

- There is no dispute that issue of notice under section 143(2) within prescribed time is mandatory before passing of the reassessment proceedings. In the present case, the assessee filed the return of income in response to notice under section 148 on 17-3-2015 showing *nil* income. The Assessing Officer has mentioned in the assessment order that notice under section 143(2) was issued on 17-3-2015. Even the submissions of the assessee also supports that notice under section 143(2) dated 17-3-2015 was issued and served upon assessee within the period of limitation. Assessee admitted that

no assessment proceedings for assessment year 2008-09 were pending, therefore, the Assessing Officer while preparing the notice under section 143(2) for year in question had mentioned by inadvertent mistake that 'return submitted by assessee on 17-3-2015 for earlier assessment year 2008-09'. In the notice under section 143(2), there is no mention for which assessment year, the notice under section 143(2) have been issued. The Assessing Officer in the notice under section 143(2) has referred to assessment order 2008-09 with reference to filing of the return on 17-3-2015 only. The purpose of issuing notice would be to put a notice to assessee that legal proceedings have started against the assessee as per law and assessee is required to attend the assessment proceedings before Assessing Officer. Admittedly the assessee's representatives appeared before Assessing Officer in compliance to notice issued under section 143(2) on 17-3-2015. The assessee participated in the proceedings before Assessing Officer and never raised the objection either before Assessing Officer or before Commissioner (Appeals) that Assessing Officer has wrongly mentioned assessment year 2008-09 in the notice for the purpose of filing the return of income under section 148 on 17-3-2015. It was a mere omission in the notice with reference to filing of the return only and as such the same could not be treated as invalid under the law. For all intent and purpose, the assessee accepted the notice under section 143(2) dated 17-3-2015 for the purpose of completion of the reassessment proceedings for assessment year 2009-10. The Assessing Officer, therefore, issued notice under section 143(2) to the assessee for assessment year under appeal and the same have been served upon assessee within the period of limitation. Therefore, such inadvertent mistake/omission is not fatal to the case of the revenue.

- The assessee on merits challenged the addition of Rs. 20,00,000 and submitted that it was a sale transaction without monetary consideration and in her alternate contention she has contended that the assessee being a house wife has no source of income and as such source of his family should have been considered and that the affidavits of deed writer, son of assessee (Vendor) and witnesses to the sale deed should be considered that no monetary consideration passed on sale of the property in question.
- The assessee has filed copy of the sale deed on record which clearly showed that assessee has paid Rs. 20,00,000 to the seller/vendor in cash. Therefore, subsequent affidavits of deed writer, vendor and witnesses to the sale deed are not relevant and are clearly after thought and have been rightly rejected by the authorities below. The assessee failed to explain source of investment in purchase of property. All the contentions raised by the assessee have not been supported by any evidence or material on record. The appeal of the assessee has no merit, the same is accordingly dismissed.