

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 826/JP/2013
निर्धारण वर्ष/Assessment Year : 2010-11.

Smt. Sita Bai Khetan, D-65, Sawai Madho Singh Road, Bani Park, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AOTPK 3322 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Shri Raghuvir Singh Dagur (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 20.07.2016.
घोषणा की तारीख / Date of Pronouncement : 27/07/2016.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

The appeal by the assessee is directed against the order of Id. CIT (A)-I, Jaipur dated 30.08.2013 pertaining to assessment year 2010-11. The assessee has raised the following grounds of appeal :-

1. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in computing the Long Term Capital Gain at Rs. 2,43,18,412/- against the declared Long Term Gain of Rs. 1,53,56,462/-. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by assessing the Long Term Capital Gain at Rs. 1,53,56,462/- only as declared by the assessee.
2. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in applying the provisions of Section 50C of the IT Act 1961 and adopting the sale consideration at Rs. 6,12,70,120/- against the actual sale consideration of Rs. 6,00,00,000/-. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by taking the sale consideration at Rs. 6,00,00,000/- for computing the Capital Gains.

3. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in not allowing indexation on the amount of Rs. 13,97,120/- paid for acquiring possession of strip of land for computing the long term capital gain. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing appropriate indexation of Rs. 13,97,120/- for computing the Long Term Capital Gain as claimed by the assessee.
4. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in not taking the Fair Market Value of the asset as on 1.4.1981 as cost of acquisition u/s 55(2) of Income Tax Act, 1961 for the purpose of computing the Long Term Capital Gains. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by taking the Fair Market Value of the asset as on 1.4.1981 as cost of acquisition for computing the Long Term Capital Gains.

2. Briefly stated the facts are that the assessee filed return of income on 30.07.2010 declaring total income of Rs. 1,61,66,940/-. The case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the IT Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 28th February, 2013. While framing the assessment, the AO made addition on account of Long Term Capital Gain and income from other sources. He computed the total income at Rs. 2,51,28,890/-. The assessee aggrieved by this order, preferred an appeal before Id. CIT (A), who after considering the submissions partly allowed the appeal of the assessee.

3. All these grounds raised in this appeal are related to computation of capital gain by the AO.

4. Ground No. 2 is with regard to adopting the sale consideration at Rs 6,12,70,120/- against the actual sale consideration of Rs. 6,00,00,000/- adopted by

the assessee. The Id. Counsel for the assessee submitted that the difference between the sale consideration of the property as per registered Sale Deed as against the value adopted by the Stamp Valuation Authority was Rs. 12,70,120/- i.e. 2.11%. Since the difference was within the tolerable limits, which is 15% of variation, as recognized by the Hon'ble Supreme Court in the case of C.B. Gautam vs. Union of India (1993) 199 ITR 530, no addition should be made. This decision has been followed by the Coordinate Bench in the case of Rahul construction vs. DCIT in ITA No. 1543/PN/2007 (2010) 38 DTR (Pune Trib.).

4.1. On the contrary, the Id. D/R opposed the submissions of the assessee on this issue.

4.2. We have heard rival contentions and perused the material available on record. We find that the Hon'ble Coordinate Bench in ITA No. 1543/PN/2007 in the case of Rahul Construction vs. DCIT (supra) has held as under :-

" We find that the Pune Bench of the Tribunal in the case of Asstt. CIT vs. Harpreet Hotels (P) Ltd. vide ITA Nos. 1156-1160/Pn/2000 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT (A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. Kaaddu Jayghosh Appasaheb, vide ITA No. 441/Pn/2004 for the asst. yr. 1992-93 and relied on by the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. vs. CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs. 20,55,000/- as against the

actual sale consideration of Rs. 19,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT (A) and direct the AO to take Rs. 19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed.”

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon’ble Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessee is allowed.

5. Ground No. 3 is against confirming the action of the AO in not allowing indexation on the amount of Rs. 13,97,120/- paid for acquiring possession of strip of land for computing the long term capital gain.

5.1. The Id. Counsel for the assessee submitted that the strip of land measuring 83.35 sq. yard was in possession of the assessee since purchase of the plot of land. The aforementioned strip of land was regularized by Jaipur Nagar Nigam when assessee applied for sub-division of the plot in January, 2008. As the strip of land was in possession of the assessee for the entire period and no claim of whatsoever nature was made on the said strip of land, even by the Theory of Adverse Possession, the assessee was the real owner of the piece of land since beginning i.e. when the original land was purchased by the assessee. The Id. Counsel for the assessee placed reliance on the judgment of the Hon’ble Supreme Court in the case of Karnataka Board of Wakf vs. Govt. of India (2004) 10 SCC 779. Since during the entire period of possession of the strip of land by the assessee, there was no intrusion/claim of whatsoever nature, the assessee was the owner of the strip without doubt. In view of this, when the strip of land was in the ownership of the

assessee since beginning, therefore cost has to be allowed as deduction with reference to the date since asset was owned by the assessee.

5.2. On the contrary, the Id. D/R opposed the submissions and submitted that the piece of land was allotted in the year 2008 so the ownership related to the land should be reckoned from that date and not the date as claimed by the assessee. The assessee has not brought on record any material suggesting that the assessee was the legal owner of the strip of land before the same was regularized by Nagar Nigam or by any court of law. Under these facts, the ground raised is devoid of any merit.

5.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The assessee is claiming to be the owner of the land even prior to the allotment made by the concerned authority, thus the assessee is claiming indexation since 01.04.1981. On a pointed query, the assessee could not produce any material suggesting that the ownership of the land in question was transferred to the assessee prior to the date when the land was allotted to the assessee. Even in respect of the Theory of Adverse Possession, the assessee has not placed any material on record that the assessee was declared owner by virtue of Theory of Adverse Possession. In our considered view, for claiming to be the owner of the land, the assessee was required to produce necessary evidences. In the absence of evidence, when contrary evidences are on record, we do not see any reason to interfere with the orders of the authorities below. Therefore, this ground of the assessee's appeal is dismissed.

6. Ground No. 4 in respect of not taking the Fair Market Value of the asset as on 01.04.1981 as cost of acquisition u/s 55(2) of the Act for the purpose of computing the Long Term Capital Gain.

6.1. The Id. Counsel for the assessee vehemently argued that the authorities below as not justified in not granting the relief. He submitted that during the course of assessment, the assessee has sought to correct the workings filed for computing the capital gains. In the return filed, fair market value as on 1st April, 1981 in terms of section 55(2) was not considered. During the course of assessment proceedings, letter dated 07.02.2013 was filed conveying the fair market value on 1st April, 1981 @ Rs. 110/- per yard. For evidencing the same, a copy of registered sale deed of the nearby area was also submitted. He submitted that the AO was duty bound to consider the fair market value as the option was exercised by assessee before completion of assessment. The working with regard to adoption of the fair market value of the property as on 01.04.1981 was brought to the notice of Id. CIT (A). The Id. CIT (A) dismissed the claim of the assessee by simply stating that the assessee could not establish the value of the plot as on 01.04.1981 and that the cost of acquisition adopted by the AO was shown by the appellant herself. The Id. Counsel submitted that the Id. CIT (A) has misdirected himself in appreciating the legal provisions contained in section 55(2) wherein Fair Market Value of the property can be replaced as on 01.04.1981. This fair market value has to be determined with reference to comparable contemporary instances of nearby location. The Id. CIT (A) has not given any reason for rejecting the comparable instance. He submitted that before the authorities below, letter dated 1st April, 1981 conveying the rate of Rs. 110/- per sq. yard was submitted. He further submitted that it is a settled law that

the income liable to be taxed has to be worked out in accordance with the law as in force. In support of the contention, reliance is placed on the Coordinate Bench decision rendered in the case of ACIT vs. Rupam Impex in ITA No. 472/RJT/2014.

6.2. On the contrary, the Id. D/R submitted that the assessee herself has adopted the value and she cannot blow hot and cold at the same time. The Id. CIT (A) has given a finding of fact, which is not rebutted by the assessee by placing any material on record.

6.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The AO has adopted the value at indexed cost of acquisition as on 01.04.1981 at Rs. 4,31,940/- and in respect of the strip of land, adopted the indexation cost of acquisition at Rs. 13,97,120/-. So far as the indexed cost of acquisition with regard to the strip of land is concerned, in ground no. 3, we have already decided the matter against the assessee. Therefore, we are not inclined to interfere with the finding of Id. CIT (A) on this issue. The submission of the assessee is rejected.

6.4 With regard to the other portion of land, it is contended by the assessee that the fair market value ought to have adopted @ Rs. 110/- per sq. yard. The working given by the assessee in respect of Fair Market Value at para 3.2 of his submission are as under :-

" 3.2. Before the lower authorities, letter duly conveying the FMV on 1st April, 1981 @ Rs. 110/- per sq. yard was submitted (PB 17). For evidencing the same, a copy of registered sale deed of the said area was also submitted (PB 18-25). Following facts clearly emerged out of the registered sale deed :

Date of Registration of Sale deed	31 Oct 81	PB : 18
Area in which property was located	Bani Park	PB : 18
Area of the Plot	370.99 sq. mtr	PB : 18
Sale Value of the Plot	Rs. 48,940	PB : 25

Calculation for arriving at the FMV of Rs. 110 per sq. yard is as under :

Area (A)	Sale consideration (B)	Value (B/A)
370.99 sq. mtr.	Rs. 48,940	Rs. 131.92 per sq. mtr
443.33 sq. mtr.	Rs 48,940	Rs. 110.39 per sq. mtr.

1. Sq. Mtr. Is equal to 1.19599 Sq. Yards "

We find force in the contention of the Id. Counsel for the assessee that Fair Market Value of the property is to be adopted on the basis of comparable sale instances. Therefore, we hereby direct the AO to re-compute the cost of acquisition on the basis after ascertaining the Fair Market Value of the property with reference to 01.04.1981 excluding the strip of land which was purchased in the year 2008. This ground of the appeal of the assessee is allowed for statistical purposes.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 27/07/2016.

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

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 27/07/2016.

Das/

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

1. The Appellant- Smt. Sita Bai Khetan, Jaipur.
2. The Respondent- The ITO Ward 6(3), Jaipur.
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 826/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

