

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. 745/JP/2015  
निर्धारण वर्ष / Assessment Year : 2012-13

Asha Sharma, Near Dak Bangla Girls Sr. Sec. School, Bhimganj Mandi, Kota Junction, Kota.	बनाम Vs.	Pr.C.I.T., Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIDPS 3855 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shravan Kr. Gupta (Adv)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 20/04/2017  
उदघोषणा की तारीख / Date of Pronouncement : 21/04/2017

आदेश / ORDER

PER: KUL BHARAT, J.M.

This is an appeal filed by the assessee arises against the order dated 09/09/2015 passed by the Id. Pr. CIT, Kota pertaining to the A.Y. 2012-13, wherein the assessee has raised following grounds of appeal:

- "1. *That the impugned order u/s 263 dated 09.09.2015 is bad in law and on facts of the case for want of jurisdiction and for various other reasons and hence the same may kindly be quashed.*
- 2.1 *That the Id. Pr. CIT Kota is erred in law as well as on the facts of the case in invoking S. 263 of the Act. The*

*same is being purely contrary to the provisions of law, therefore, the impugned order u/s 263 of the Act kindly be quashed.*

2.2 *That the Id. CIT Kota is erred in law as well as on the facts of the case in taking the action u/s 263 of the Act on the allegation that:*

*deduction of Rs. 16,25,000/- for Shrama Ice Factory and Rs. 4,80,000/- in the case building at S-33, MBS Nagar is not allowable and the AO has erroneously assessed the Capital Gain at loss of Rs. 347/- and Rs. 5,805/-, respectively instead of Capital Gain of Rs. 16,24,653/- and Rs. 4,74,195/- thereby leading to the under assessment of income of Rs. 20,98,848/- . Which is contrary to the facts and such a finding being perverse, the impugned action is bad in law without jurisdiction and being void ab initio, the impugned order u/s 263 of the Act kindly be quashed.*

3. *That the Id. Pr. CIT Kota is erred in law as well as on the facts of the case in setting aside the assessment to be made afresh with the direction to re-examine the issue in the light of his observation. The same is being purely contrary to the provisions of law, therefore, the impugned order u/s 263 of the Act kindly be quashed.*

2. All the grounds of the appeal in interlinked and are against the order passed by the Id. Pr. CIT U/s 263 of the Income Tax Act, 1961 (hereinafter referred as the Act). In this regard, the brief facts of the case are that the assessment U/s 143(3) was completed vide order dated 31/3/2014. Subsequently, the Id. Pr.CIT issued a notice U/s 263 of the Act calling upon the assessee as to why the assessment order dated 31/3/2014 be not

revised as the order of the Assessing Officer being erroneous in so far as it is prejudicial to the interest of the revenue on the issue of income under the head "income from capital gain". In response thereto, the assessee made a written reply. However, the same was not accepted by the Id. Pr. CIT. He proceeded to revise the order by setting aside the order of the Assessing Officer and restoring the assessment for framing de novo assessment to the Assessing Officer.

3. Being aggrieved by the order of the Id. Pr.CIT, the assessee is in appeal before us.

4. Ld. Counsel for the assessee has vehemently argued that the action of the Id. Pr.CIT is not justified. He reiterated the submissions as made in the written submissions and further submitted that the Assessing Officer had, in fact, made enquiry by making query on this issue.

5. Per contra, the Id. CIT DR has supported the order of the Pr. CIT. He submitted that a bare perusal of the assessment order would go to demonstrate that the Assessing Officer has not carried out any enquiry in respect of the issue in question and has not applied his mind. Therefore, the Id. Pr.CIT was justified in revising the order.

6. We have heard the rival contentions of both the parties, perused the material available on the record and have also gone through the orders of the authorities below. It is noticed by the Id. Pr.CIT that during the year

under appeal, the assessee had sold two immovable properties. It is also noticed by the Id. Pr.CIT that as per balance sheet filed by the assessee for the assessment year 2011-12, the value of the two properties were as under:-

Sharma Ice Factory	Rs. 3,67,495/-
Building S-33, MBS Nagar	Rs. 17,10,000/-
	(8,10,000 + 9,00,000)

It is the case of the assessee that a valuation report was submitted showing year wise construction and that the sale deed also mentions the construction of property. However, the Id. Pr.CIT has given a finding, no such evidence, books of account or balance sheet for the year in which the construction has been made, filed to prove actual construction and its recording in the books of account. The assessee was required to file evidences in support of the construction for making a claim in respect of cost of acquisition of the property by furnishing the evidence of expenditure incurred. However, the assessee has filed a valuation report by a registered valuer enclosed at pages No. 11 and 12 of the paper book. The valuer has reported that cost of construction is calculated as per the standing order of the department of Public Works, Government of Rajasthan. Under these facts, we deem it appropriate to modify the impugned order and direct the Assessing Officer

while deciding the issue of cost of property would call for a valuation report from the departmental valuer and also make enquiry with regard to the cost of construction of the property.

7. In the result, appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 21/04/2017.

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(कुल भारत)  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21<sup>st</sup> April, 2017

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Asha Sharma, Kota.
2. प्रत्यर्थी / The Respondent- The Pr.C.I.T., Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 745/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar