

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

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 428/JP/2016  
निर्धारण वर्ष/Assessment Year : 2011-12.

The Income Tax Officer, Behror.	बनाम Vs.	Sh. Suchet Singh Yadav, S/o Sh. Sultan Singh Yadav, Ward No. 06, Near Police Station, Mohalla- Manpura, Behror.
स्थायी लेखा सं./जीआईआर सं./PAN No. ASVPS 5939 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri R.A. Verma (Addl.CIT)  
निर्धारिती की ओर से/ Assessee by : Shri Satish Gupta (CA)

सुनवाई की तारीख/ Date of Hearing : 12.10.2017.  
घोषणा की तारीख/ Date of Pronouncement : 24/10/2017.

आदेश/ ORDER

**PER SHRI KUL BHARAT, JM.**

This appeal filed by the Revenue is directed against the order of the Ld. CIT(A), Alwar, dated 26-02-2016 pertaining to the Assessment Year 2011-12.

The Revenue has raised the following ground of appeal:-

- "1. That the Ld. Commissioner of Income Tax (Appeals), Alwar has erred on the facts and circumstances of the case in deleting the addition made by the AO on account of Long Term Capital Gain for Rs. 1,53,11,568/-."
2. Briefly stated the facts are that the case was reopened for assessment and the assessment u/s 147 and read with Section 143(3) of the Income Tax Act, 1961(hereinafter referred to as the Act) was framed vide order dated 27.03.2015.

While framing the assessment the Assessing Officer made addition on account of long-term capital gain for Rs. 1,53,11,568/- on account of agreement to sale was executed by the assessee. Against this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions directed the Assessing Officer to assess the capital gain in the hands of HUF of the assessee as land transferred belongs to HUF.

3. Ld. Departmental Representatives argued that Ld. CIT(A) was not justified in directing the capital gain to be assessed in the hands of the HUF. He submitted that land is transferred by the assessee.

4. On the contrary, Ld. Counsel for the assessee submitted that the land was transferred by the assessee however, land belongs to HUF. He therefore supported the order of the Assessing Officer.

5. We have heard the rival contentions, perused the material available on record and gone through the order of the authorities below. The Ld. CIT(A) who after considering the submissions as given a finding on fact on para 5.5 to 5.17 as under:-

*"5.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations given therein and cross reply of the appellant and find an addition of Rs. 1,53,11,568 has been made by the AO on account of long term capital gains on sale of land in the hands of appellant. A survey u/s 133A of the IT Act was conducted at the business premises of M/s Ganpati Plaza on 29-30/08/2013, in which the appellant is a partner with 50% share in the profit of the firm. During the course of survey some sale deed/ agreements pertaining to sale of land were found and impounded.*

5.6 Thereafter, a statement of the appellant was recorded u/s 131 of the IT Act on 14.10.2013 and in the statement it was admitted by the appellant that gains have been made on sale of agriculture land in FY 2010-11, situated at Khasra No. 698, Tehsil- Gangabishan, Behror and on this no tax has been paid. The appellant had also stated before that agreement to sell for sale of agricultural land @ Rs. 5,000 per sq. yd. has been entered in to with Sh. Akhilesh Yadav urf Subhash S/o Nathu Ram Yadav, Behror. A copy of the agreement duly notarized was also filed. Under this agreement a part of the consideration amounting to Rs. 30 lacs had received by the appellant and the balance amount was to be paid after plotting the land and on further sale of plots.

5.7 AO has computed the total sale consideration at Rs. 1,59,60,000 after taking 70% of the total area of agricultural land (38 aire i.e. 4560 sq. yd.), as the plotted area, which comes to 3192 sq. yds. The balance 30% area has been considered by the AO to have been used for internal roads and passage. This area of 3192 sq. yd. of plots has been multiplied with the selling rate of Rs. 5000 per sq. yd., to arrive at the total consideration of Rs. 1,59,60,000. AO has also given a deduction for the indexed cost of acquisition to arrive at the long term capital gains of Rs. 1,53,11 568.

5.8 The appellant has in the course of assessment proceedings and even at the time of initiation of assessment proceedings u/s 148 of the IT Act stated that the agricultural land sold does not pertain to the appellant and instead belongs to the HUF of the appellant. The land is stated to be ancestral and has been received on succession. It is submitted that father of the appellant' Late Sh. Sultan Singh inherited some agricultural land bearing Khasra no. 694, 698, 699, 700, 723, 763 to 768, 770, 778, 798, 845 situated in village Behror from his forefathers. Thereafter the said agricultural land devolved upon Sh. Suchet Singh and Sh. Tej Singh (brother of the appellant)

*and later through Vibhajan Patra (Partition Deed) dated 26/2/02 the said land was equally partitioned between two brothers of the family.*

*5.9 It is submitted by the appellant that HUF of Sh. Suchet Singh Yadav received agricultural land in partition. Copy of partition deed in between Vidhya w/o Late Shri Tej Singh, Satish Kumar, Nihal Chand, Sanjay Kumar S/o Tej Singh and Suchet Singh was submitted before the lower authority and is again submitted in the present proceedings. Further, a copy of Jama Bandi endorsing partition of land has also been submitted to substantiate. AO has not stated in the order that the contention of the appellant that land belongs to HUF is factually incorrect. These facts have been confirmed by the appellant and his son Sunil Yadav, in the course of assessment proceedings.*

*5.10 The appellant has further submitted that the agreement for sale of land entered into with Sh. Akhilesh Yadav urf Subhash S/o Nathu Ram Yadav, Behror was cancelled and part consideration received from him have been duly returned back. A return of income showing the gains made on sale of plots alongwith the copy of sale deeds for the sale of plots made in FY 2010-11, 2011-12, 2012-13 and 2013-14 has been filed by the HUF, since the ownership of land was in the hands of HUF of the appellant.*

*5.11 The detailed submission alongwith the supporting evidence filed by the appellant was forwarded to the AO for examination and submission of report after conducting enquiries as considered necessary. The AO was asked to examine carefully the material available on record and comment on the following issues:-*

- (i) Whether gains on sale of land have to be assessed in the hands of an individual or an HUF;*
- (ii) Whether sale price can be determined on the basis of a cancelled agreement or not;*

*(iii) Whether the claim of deduction u/s 54F of the IT Act is to be given or not and if yes, in the hands of individual or an HUF;*

*(iv) Whether the gains on sale of land have to be assessed over a period of four years or in one year.*

*5.12 AO in the remand report has reiterated the facts that gains from sale of land have to be assessed in the hands of the appellant, as an individual as the sale agreement was executed by him with Sh. Subhash. Further, it is stated that under the provisions of section 2(47)(v) of the IT Act r.w.s. 53A of the Transfer of Property Act, the property was transferred to the intending buyer under the above said agreement. Therefore, gains earned on sale of such land have to be assessed in the hands of the individual. As regards the chargeability of the gains on sale of land is concerned, the same have been rightly assessed in the period under consideration. It is stated in the report that deduction u/s 54F of the IT Act may be given to the appellant.*

*5.13 The appellant has stated in the cross reply filed that AO has failed to consider the fact that Sh. Subhash in his statement recorded before the AO in the course of assessment proceedings has confirmed the fact that sale agreement entered into earlier with the appellant was cancelled as he failed to make the balance payment. Further, no comments with regard to the ownership of land in the hands of the HUF have been made by the AO. The possession of land was with the appellant and therefore provisions of section 53A of the Transfer of Property Act have been wrongly invoked by the AO.*

*5.14 Having carefully examined the detailed evidence available on record. I find that there is no dispute that the land was owned by the father of the appellant and had been received by his father on inheritance. After the death of Sh. Sultan Singh father of the appellant, the land was jointly owned by the family of the appellant and Sh. Tej Singh (brother of the appellant). The land was partitioned by execution of a deed on 26-02-2002 and equally divided*

*between the two brothers. The fact of ownership of land by the HUF of the appellant is clearly not controverted with any material evidence by the AO. The appellant has also placed on record a copy of the Jamabandi to evidence the partition of land.*

*5.15 Thus, in view of the above facts, I find that AO was not justified in ignoring the overwhelming evidence available on record and treating the appellant to be the owner of the land in his individual capacity. Accordingly, I hold that ownership of land lies with the HUF of the appellant and therefore it would be appropriate to tax any gains arising on sale of such land in the hands of the HUF of the appellant. Therefore, I direct the AO to initiate necessary proceedings under the provisions of the IT Act for assessment of gains made on sale of land in the hands of the HUF. Further, the contentions of the appellant as regards the disclosure of such gains already made in the hands of the HUF may also be verified.*

*5.16 Further, as regards the quantification of gains on sale of land is concerned, the appellant has in the course of assessment proceedings stated before the AO that agreement to sale executed with Sh. Subhash has been cancelled. Thereafter, land has been sold after plotting the same to different buyers over a period of 3-4 years. The contentions of the appellant were confirmed by the AO after recording a statement of Sh. Subhash, in the course of assessment proceedings. The appellant has also filed on record a copy of all the sale deeds duly executed with different buyers from time to time in the office of the Sub Registrar. These facts have not been controverted by the AO by making any further enquiry or with any other material evidence. Thus, I hold that gains made on sale of land can not be assessed on the basis of an agreement to sale, which has been cancelled. Accordingly, the AO is being directed to assess the gains made on sale of land in the hands of the HUF in the year of sale of such land.*

*5.17 Thus, an addition of Rs. 1,53,11,568 made by the AO on account of long term capital gains in the hands of the appellant, in individual capacity is deleted with a direction to assess such gains in the hands of the HUF of the appellant. Further, AO would tax such gains in the year of sale of the plots.”*

The above finding on fact is not controverted by the Revenue by placing any contrary material on record. Admittedly, the Assessing Officer has not controverted the fact that ownership of the land by HUF, which is evidenced by the copy of the Jamabandi. Therefore, we do not see any reason to interfere into the finding on fact as arrived by the Ld. CIT(A), same is hereby affirmed. The ground raised in this appeal is rejected.

6. In the result, appeal of the Revenue in ITA No. 428/JP/2016 is dismissed.

Order pronounced in the open court on Tuesday, the 24<sup>th</sup> day of October 2017.

Sd/-  
( भागचन्द )  
( BHAGCHAND)  
लेखा सदस्य/Accountant Member  
Jaipur  
Dated:- 24/10/2017.  
Pooja

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

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

1. The Appellant- The ITO, Behror.
2. The Respondent – Sh. Suchet Singh Yadav, Behror.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 428/JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

