

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

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 302/JP/2017
निर्धारण वर्ष/Assessment Year: 2011-12

Virendra Singh, Chajju Singh Ki Gali, outside Malakheda Gate, Alwar.	बनाम Vs.	Income Tax Officer, Ward 2(1), Alwar.
PAN/TAN No.: CXYP5 1629 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 303/JP/2017
निर्धारण वर्ष/Assessment Year: 2011-12

Surendra Singh, Chajju Singh Ki Gali, outside Malakheda Gate, Alwar.	बनाम Vs.	Income Tax Officer, Ward 2(1), Alwar.
PAN/TAN No.: CXHPS 2840 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 08/11/2017
उदघोषणा की तारीख / Date of Pronouncement : 10/11/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

Both these are the appeals filed by two different assessee emanates
from the two separate orders dated 23/02/2017 passed by the Id. CIT(A),

Alwar pertaining to the assessment year 2011-12. The grounds taken by both these assessees in both the appeals are reproduced as under:

Grounds of ITA No. 302/JP/2017

- "1. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of AO in not allowing the claim of deduction u/s 54B of Rs.9,01,322/- on the ground that no agriculture activities were conducted on Khasra No.890 & 886 in two preceding years prior to the date of sale.*
- 2. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of A.O. in taking the sales consideration of the agricultural land sold u/s 50C at Rs.29,32,189/- as against actual sales consideration of Rs.26,95,500/- by incorrectly distinguishing the case laws relied by the assessee.*
- 3. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of AO in not allowing the claim of dalali payment of Rs.75,000/- on sale of land and fencing expenses of Rs.2,10,000/- on the agricultural land purchased by the assessee in computing the capital gain."*

Grounds of ITA No. 303/JP/2017

- "1. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of AO in not allowing the claim of deduction u/s 54B of Rs.8,05,540/- on the ground that no agriculture activities were conducted on Khasra No.890 & 886 in two preceding years prior to the date of sale.*
- 2. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of AO in taking the sales consideration of the agricultural land sold U/s 50C at Rs. 26,02,211/- as against actual sales consideration of Rs. 23,89,250/- incorrectly distinguishing the case laws relied by the assessee.*
- 3. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of AO in not allowing the claim of dalali payment of Rs.35,000/- on sale of land and fencing expenses of*

Rs.2,15,000/- on the agricultural land purchased by the assessee in computing the capital gain.

2. In both the appeals, there are common issues involved, therefore, the same were heard together and for the sake of convenience and brevity, a common order is being passed.

3. The brief facts of the case are that the both these assessees have sold 1.73 hectare of agricultural land located at village Bhugore, Tehsil-Alwar, comprising of Khasra No. 886, 887 and 890. Shri Virendra Singh has sold his share for Rs. 26.95 lacs and Shri Surendra Singh has sold his share at Rs. 23,89,250/-. Both these assessees computed long term capital gain on sale of their agricultural land at Nil after claiming deduction U/s 54B of the Income Tax Act, 1961 (in short the Act). During the assessment proceedings, the Assessing Officer observed that the agriculture was being carried over in Khasra No. 887 measuring 1.10 hectare. However, no agriculture activities were carried out in Khasra No. 886 measuring 0.01 hectare and Khasra No. 890 measuring 0.62 hectare. The Assessing Officer reduced the claim of deduction U/s 54B of the Act. In the case of Virendra Singh the claim U/s 54B was reduced by Rs. 9,01,322/- and in the case of Surendra Singh, it was reduced by Rs. 8,05,540/-.

4. In the ground No.1, the issue is against partly disallowance of claim U/s 54B of the Act in both these appeals. The Assessing Officer disallowed

the claim for the reason that on khasra No. 890 and 886, no agriculture was carried out in two preceding years prior to the date of sale. The Id. CIT(A) has confirmed the action of the Assessing Officer in the case of Virendra Singh by holding as under:

“5.3 I have considered the assessment order and submissions filed by the appellant during the course of appellate proceedings. Following facts have emerged;

- 1. That the appellant during the year under consideration had sold 3 land parts as per khasra No. 886, 887, 890.*
- 2. That the appellant sold the above mentioned three pieces of land on 21-04-2010, 25-08-2010 and 02-02-2011 for actual sale consideration of Rs. 26,96,500/-.*
- 3. That the sold land was valued at Rs. 29,32,189/- by the DLC for the purpose of stamp duty.*
- 4. That the AO had invoked provisions of section 50C(1) of the Act and taken value of Rs. 29,32,189/- as deemed sale consideration for the purpose of calculating capital gain.*
- 5. That the assessee had purchased another agriculture land on 27- 04- 2012 for a consideration of Rs. 18,80,400/-.*
- 6. That the assessee had claimed deduction u/s 54B of the Act for Rs. 25,14,850/-. The AO had considered the value of purchased land at Rs. 18,80,400/-.*
- 7. That as per the Khasara-girdawari record, land in Khasara No. 890 and 886, no agricultural activities were conducted for two preceding years prior to the date of sale. As a result, the AO has disallowed Rs. 9,01,322/- for the purpose of section 54B of the Act.*

5.3.2 *I have considered the above mentioned fact. It would be worthwhile to reproduce the provision of section 54B for the sake of convenience as under:-*

54B. Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.- (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme 19 which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

The AO has disallowed the deduction claimed by the assessee on the following reasons:-

1. *That the sale consideration received by the assessee has not been utilized in purchase of other agricultural land or deposited unutilized amount in the Capital Gain Deposit Scheme, 1988 up to the date of filing of return u/s 139(1) as per condition laid down u/s 54B(2) of the Act.*
2. *That land of Khasara 890 and 886 was not utilized for agricultural purposes within two years from the date of transfer as per conditions laid down in section 54B(1) of the Act.*
3. *That deemed sale consideration is to be adopted u/s 50C of the Act.*

Point no. 1:- Hon'ble ITAT Jaipur Bench in assessee's own case for AY 2010-11 has decided that for the purpose of claiming deduction u/s 54B of the Act, if the assessee has purchased eligible assets u/s 54B within the period of two years from the date of transfer then the deduction is allowable, irrespective of the fact, whether un-utilized capital gain has been put in the Capital Gain Deposit Account Scheme, 1988 before the date of filing of return u/s 139(1) of the IT Act. Since, in this case the assessee has purchase the eligible asset on 27-04-2012 (date of transfer of land Khasra No. 887 - 02-02-2011) which is within the time period allowed as per section 54B(1) of the Act, the deduction is allowed as per Hon'ble ITAT, Jaipur Bench confirmed by Hon'ble Rajasthan High Court on similar issue is assessee own case for AY 2010-11. Accordingly, deduction u/s 54B of the Act for the eligible land is allowed.

Point No. 2;- I have considered above mentioned point no. 2 and surrounding facts. On the factual matrix and legal conditions as provided under the Income Tax Act, the AO has rightly disallowed part of land sold (Khasara No. 890 and 886) in the year under consideration as mandatory condition under section 54B of the Act was not fulfilled by the appellant.

Point No. 3:- I have already discussed in detail issues involved in point no. 3 in para 6 below while adjudicating ground of appeal no. 1(b) and held the action of the AO justified.

5.3.3 *It has also been noticed that the appellant had sold part of land of value Rs. 19,65,091/- on 21/04/2010 whereas the investment in agricultural land was made for his share at Rs. 19,70,000/- on 27/04/2012. The date of investment falls outside the scope of section 54B of the Act.*

5.3.4 *In the result, the AO is directed to re-compute the deduction allowable u/s 54B of the Act as per the adjudication made above and also take into account adjudication of ground of appeal no. 1(b), 1(c) and 1(d). Accordingly, the appellant's ground of appeal on the issue is partly allowed.*

5. While pleading on behalf of the assessee, the Id AR has submitted that khasra No. 886 was only 0.01 hectare and the description was "Gare Mumkin Chah", which suggests that it was a well for supplying of water to the crops. He also submitted that on Khasra No. 890, agriculture activity was carried out in Samvat 2061 & 2062. However, it was admitted that there was no agriculture activity on Khasra No. 890 in the preceding two years from the sale of the land and he tried to justify the claim of the assessee for the reason that due to vagaries of nature and non availability of resources he was unable to put the land to use. However, there was no supporting document with regard to this claim. Ld. AR has relied on the decision in the case of ACIT Vs N. Raghu Verma (2013) 42 ITD 421 (Hyd)(Trib).

6. On the other hand, the Id DR has relied on the orders of the authorities below.

7. I have heard the rival contentions of both the parties and perused the material available on the record. I have also perused the order of the Coordinate Bench of ITAT, Hyderabad Bench, but the facts of these assessee's cases are completely at variance. There is no evidence in support of the contentions raised in the submissions by the Id AR. It is admitted fact that there was no agriculture activity on these lands in the two preceding years from the sale of the land. Therefore, I have no alternate but to confirm the findings recorded by the Id. CIT(A) on this issue. Ground No. 1 of both these appeals stand dismissed.

8. In the ground No. 2, the issue involved is sale consideration lower than the stamp duty valuation and additions made U/s 50C of the Act in both these cases. The Id CIT(A) has dismissed this ground. The Id CIT(A)'s adjudication regarding this ground in the case of Virendra Singh is as under:

"6.3 I have gone through the assessment order as well as submissions n by the AR and find that an addition of Rs. 2,36,689/- has been n by the AO by adopting the DLC value of land as sale consideration as per the stamp duty paid on the sale of the land. The appellant has cited various judgments in support of his claim that since the difference between actual sale consideration and DLC rate is less than 10% hence as per various court judgments, the actual sale consideration should be taken to calculate capital gain. I have considered the judgments cited. In all such cases the

dispute was between the valuation made by DVO and the sale consideration. Here, the valuation was not made by DVO but the rate taken for the purpose of stamp duty was taken as deemed sale consideration as per the provision of Section 50C(1) of the Act. Therefore, in the present case, the facts of the case is different from those adjudicated by the court judgments cited by the appellant. Therefore on factual matrix of the case, it is my considered view that the A.O has rightly taken the consideration at Rs. 29,32,789/- as against actual sale consideration of Rs. 26,95,500/-. Accordingly, A.O's contention in this regard is sustained and the appellant's ground of appeal is dismissed."

9. After hearing both the sides on this issue and considering the case laws relied upon, I am of the view that there is no choice with the Assessing Officer but to adopt the value U/s 50C of the Act as provided in the law. The law provides that if the assessee claims that the value adopted/assessed by the Stamp Valuation Authority under sub-Section (1) of Section 50C exceeds the fair market value of property as on the date of transfer then the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer. The assessee has not sought relief under this provision of the law. Therefore, after considering all relevant facts and the factual matrix of the issue, I have no alternative but to confirm the findings recorded by the Id. CIT(A) while dismissing this ground of appeal. However, in the case of Surendra Singh, it was claimed that the Stamp Duty Authority has determined the value at Rs. 25,29,641/- while the Assessing Officer has

taken it at Rs. 26,02,211/-. The relief shall be granted to that extent, which is apparently a mistake in adopting the value.

10. In the ground No. 3 of both these appeals, the issue is not allowing the claim of Dalali payment and the fencing expenses incurred. The Id. CIT(A) has dealt the issue in the case of Virendra Singh as under:

“7.3 I have gone through the assessment order as well as submissions made by the AR. Any claim of expenditure has to be backed by evidence of such expenditure and has to be related to the transaction. In this case, the appellant had failed to give evidences before the A.O. Even during appellate proceedings, no credible evidences have been provided. Therefore, A.O is justified in disallowing the expenditure of Rs. 75,000/- claimed as dalali w.r.t the land transaction. Accordingly, appellant’s ground of appeal on this issue is dismissed.

8.2 I have gone through the assessment order as well as submissions made by the AR. Any claim of expenditure has to be backed by evidence of such expenditure and has to be related to the transaction. In this case, the appellant had failed to give evidences before the A.O. Even during appellate proceedings, no credible evidences have been provided. Therefore, A.O is justified in disallowing the expenditure of Rs.2,10,000/- claimed as expenses related to fencing of the land. Accordingly, appellant’s ground of appeal on this issue is dismissed.”

Thus the Id. CIT(A) has confirmed the action of the Assessing Officer on the claim of expenditure in both these cases for the reasons that the assesseees have failed to give any evidence even during the appellate proceedings.

11. The Id AR of the assessee while pleading on this issue has submitted as under:

1. The assessee while computing the capital gain claimed deduction on account of dalali payment of Rs.75,000/-. The assessee further claimed that he incurred expenditure of Rs.2.10,000/- on fencing of the agricultural land purchased by it to protect the crops from theft and harm from animals. The same is rejected by AO for want of evidence. The Id. CIT(A) confirmed the order of AO.

2. It is submitted that before the lower authorities, AO could not submit the evidence but it is a known fact that without payment of commission the land cannot be sold. Further, in respect of expenditure incurred on fencing of agricultural land, the AO could have made spot verification. Therefore, considering the entirety of the facts, the expenditure claimed be directed to be allowed.

12. On the other hand, the Id DR has relied on the orders of the authorities below.

13. I have heard both the sides on this issue. Admittedly, the assessee has not produced any evidence before the authorities below in support of the claim of payment of Dalali as well as claim of expenditure incurred on fencing. No expenditure can be allowed without any supporting documents. Therefore, considering all the relevant facts on the issue, I am of the view that the Id. CIT(A) has rightly sustained the addition of disallowing the expenditure in the form of payment of Dalali and making of fencings in both these cases. Accordingly, this ground of both the appeals stand dismissed.

14. In the result, ITA No. 302/JP/2017 is dismissed and ITA No. 303/JP/2017 is partly allowed.

Order pronounced in the open court on 10/11/2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10th November, 2017

*Ranjan

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

1. अपीलार्थी / The Appellants- (i) Shri Virendra Singh, Alwar.
(ii) Shri Surendra Singh, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(1), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 302 & 303/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar