

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE: SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

ITA No.323/RPR/2014
(Assessment Year :2009-2010)

ITO-Ward-1(1), Raipur (CG)	vs	Surendra Singh Gurudutta Shreeji Vihar Choubey Colony Raipur
PAN No. : AJJPG 6258 N		
(Appellant)	..	Respondent

AND

Cross Objection No.91/RPR/2015
(Arising out of ITA No.323/RPR/2014)
(Assessment Year :2009-2010)

Surendra Singh Gurudutta Shreeji Vihar Choubey Colony Raipur	vs	ITO-Ward-1(1), Raipur (CG)
PAN No. : AJJPG 6258 N		
(Appellant)	..	Respondent

Revenue by : Shri Ajit Kumar Laskar, DR
Assessee by : Shri G.S.Agrawal, AR

Date of Hearing : 15/01/2018
Date of Pronouncement 17/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 19.08.2014 for the assessment year 2009-2010.

The assessee has filed cross objection.

2. The Revenue in its appeal has taken the following grounds of appeal :-

1. "Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in restricting the addition of LTCG from Rs. 65,73,500/- to Rs. 43,67,720/-?"

2. " Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in allowing adoption of value of property as on 01.04.1981 at Rs. 3,79,000/- when the AO has not been given any opportunity to examine the fair market value as on 01.04.1981.?"

3. "Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in restricting the addition from Rs.

47,77,50/- to Rs. 24,00,000/- out of addition made by A.O. on account of unexplained deposit in bank U/s 69 of the IT Act, 1961?"

4. "The Order of the Ld. CIT(A) is erroneous both in law and on facts?"

5. "Any other ground that may be adduced at the time of hearing".

3. Brief facts of the case are that the AO observed that the assessee had sold immovable property for Rs.65,73,500/- on 27.12.2008 and the same was registered at the office of Sub-Registrar Collectorate Parisar Ghari Chowk, Raipur. Since, the assessee has failed to explain about such transaction despite of affording repeated opportunities, it was construed that he has nothing to say in this regard, therefore, the entire amount of Rs.65,73,500/- received on sale of property was held as long term capital gains in an assessment made u/s.144 of the Act on 23.12.2011 and added to the total income of the assessee.

4. On appeal, the CIT(A) has reduced the same to Rs.43,67,720/- and allowed relief of Rs.22,05,780/-. While doing so, the CIT(A) held as under:-

12. I have carefully gone through the assessment order, submissions of the appellant. Remnd Report of the A.O and counter comments of the appellant. The appellant has claimed that he had inherited the house from his late father Shri Rawel Singh who purchased the property in sixties and, therefore, the said property belongs to HUF and should not have been taxed in the hands of the appellant. As regards claim of the appellant that the property belonged to the HUF and not to the appellant in his individual capacity. I find no merit in the claim of the appellant. I have carefully examined the provisions of Hindu Succession Act, 1956. The appellant has not brought on record any will by virtue of which it can be claimed by the appellant that he was not the owner in his individual capacity. In the absence of any will, as per the

provisions of Hindu Succession Act, 1956, the appellant has inherited the property in his individual capacity, therefore, the appellant's claim that the capital gain belonged to HUF is not tenable.

12.2 It was submitted that the property in consideration situated at Gurunanak Chowk, Raipur was sold for Rs.17,00,000/- during the year. The value as per Collectorate Guidelines was Rs.65,73,500. The appellant has claimed that the Collectorate's Guidelines was on the higher side and adoption of value of Rs. 65,73,500/-was unjustified. It is further argued that while working-out the Capital Gain, the A.O did not deduct the cost after indexing the same. The appellant has filed a Valuation Report of a Chartered Valuer valuing the aforesaid property as on 01/04/1981. As the Valuation Report, the value of the property as on 01.04.1981 was Rs. 3,79,000/- which, after indexing comes to Rs. 22,05,780/- (Rs. 3,79,000 x Rs.582) / 100.

12.3 The AO added the entire sum of Rs. 65,73,500/- as income as the Order was passed ex-parte. In the Remand Report dated 04/07/2014, the A.O has stated that "the indexation as computed by the assessee may now be considered on merits." He has not disputed the value of the property as on 01/04/1981 as worked-out by the Chartered Valuer.

12.4 I find that the argument of the learned AR with regard to value of the property as per Collectorate Guidelines, as adopted by the AO u/s 50C, claimed to be on the higher side remains unsupported. The appellant never requested before the A.O or during appellate proceedings to refer the matter to the DVO u/s 50C(2). Therefore, the sale consideration as per Collectorate Guidelines and as per registered documents has been rightly taken by the AO at Rs. 65,73,500/-. However, I am convinced with the arguments of the learned AR that the property was purchased prior to 1981 and, therefore, deduction of fair market value as on 01/04/1981 and benefit of indexation should be allowed. This was

not done by the AO in the Assessment Order as the Order was passed ex-parte and the appellant did not supply any information in this regard. The value of the property as on 01/04/1981 is valued by the Chartered Valuer at Rs. 3,79,000/-. The AO has not challenged the valuation in his Remand Report and has submitted to consider the case on merits. Considering the value of the property in 1981 at Rs.3,79,000/- based on Valuer's Report, the indexed cost comes to Rs. 22,05,780/- (Rs. 3,79,000 x Rs.582) / 100. Accordingly, the appellant is entitled for deduction of Rs. 22,05,780/- u/s 48 of the Act. Therefore, the Long Term Capital Gain on the sale of above property is worked-out at Rs.43,67,720/- (Rs.65,73,500 — Rs.22,05,780). Appellant gets relief of Rs.22,05,780/-.”

5. The DR supported the order of Assessing Officer and argued that before the AO, the assessee has not submitted anything and before the CIT(A) the assessee filed additional evidence in the form of valuation report of Chartered Valuer. Thus, there was violation of Rule 46A of I.T.Rules, 1962.

6. On the other hand, the AR of the assessee argued that the Hon'ble Bombay High Court in the case of Smt. Prabhavati S.Shah Vs. CIT, (1998) 231 ITR 1, has held that, “ *the powers of the AAC are much wider than the powers of an ordinary Court of appeal. The scope of his powers is co-terminus with that of the ITO. He can do what the ITO can do. He can also direct the ITO to do what he failed to do. The power conferred in AAC under sub-s, (4) of s. 250 of the Act being quasi-judicial power, it is incumbent on him to exercise the same if the facts and circumstances justify. If the AAC fails to exercise his discretion judicially and arbitrarily refuses to make enquiry in a case where the facts and circumstances so*

demand, his action would be open for correction by a higher authority.” He submitted that there would have been violation of Rule 46A of I.T.Rules, 1962, if the assessee had filed any evidence on his own. The evidences were called for by the CIT(A) and on his demand same were filed by the assessee, hence, the same was outside the purview of Rule 46A of Rules, 1962 in view of sub-section (4) of section 250 of the Income Tax Act.

7. The DR could not controvert the submissions of AR of the assessee.

8. In the above facts and circumstances of the case, we are of the considered view that the issue at hand is covered by the decision of Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah (supra). In the instant case the assessee failed to put an appearance before the AO, and, therefore, the AO treated the entire sale consideration of property at Rs.65,73,500/- at long term capital gain of the assessee.

9. On appeal, the CIT(A) held that he was convinced with the argument of AR of the assessee that the property was purchased prior to 1981, therefore, deduction of fair market value as on 01/04/1981 and benefit of indexation should be allowed. This was not done by the AO in the Assessment Order as the Order was passed ex-parte and the assessee did not supply any information in this regard. The value of the property as on 01/04/1981 is valued by the Chartered Valuer at Rs.3,79,000/-. The AO has not challenged the valuation in his Remand

Report and has submitted to consider the case on merits. Considering the value of the property in 1981 at Rs.3,79,000/- based on Valuer's Report, the indexed cost comes to Rs. 22,05,780/-. Accordingly he held that the assessee was entitled for deduction of Rs.22,05,780/- u/s.48 of the Act and, therefore, reworked the long term capital gain on sale of above property at Rs.43,67,720/- in place of 65,73,500/- and allowed relief of Rs.22,05,780/- to the assessee.

10. The DR could not controvert the above findings of CIT(A) by bringing any cogent and positive material on record. Hence, we do not find any good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

11. Other issue in this appeal is that the CIT(A) has erred in restricting the addition from Rs.47,77,500/- to Rs.24,00,000/-.

12. Brief facts of the case are that the AO observed that it was informed as per AIR return that the assessee has deposited cash aggregating to Rs.47,77,500/- in Indian Bank, Gurunanak Chowk, Ramsagarpara, Raipur during the period 01.04.2008 to 31.03.2009. As the assessee has failed to furnish any explanation of nature and source of such cash deposits, the AO added Rs.47,77,500/- as undisclosed income u/s.69 of the Act to the income of assessee.

13. On appeal, the CIT(A) restricted the disallowance to Rs.24,00,000/- and while doing so, the CIT(A) held as under :-

16.4 I have considered the arguments and written submission of the learned AR as well as Assessment Order & Remand Report of the AO. The AO. in the absence of any explanation available, has added the entire sum of Rs. 47,77,500/- as deposited into bank in cash as income under undisclosed sources u/s 69. From the bank and cash compilation, I find that peak cash deposit in the account of appellant comes to Rs.13,57,0257- on 10/12/2008. I find that cash has been withdrawn from the bank account and deposited subsequently. Therefore, peak cash deposited should be considered. Keeping in mind the possible error in calculation, the peak cash deficit is estimated at Rs. 14,00,000/- as against total cash deposit during the year at Rs. 17.77,500/-. Thus, a relief of Rs. 3,77,500/- is allowed out of peak cash deficit.

16.5 The appellant is aged about 64 years. He has filed Returns of Income as below since A.Y. 2006-07:

Assessment Year	Income Returned			Date of filing Income Tax Return
	Non-Agriculture (Rs.)	Agriculture (Rs.)	Total (Rs.)	
2006-07	1,37,829/-	-	1,37,829/-	30.03.2007
2007-08	1,77,6827-	30,000/-	2,07,682/-	12.12.2007
2008-09	1,57,250/-	30,000/-	1, 87,250/-	31.12.2008
2009-10	1,36,215/-	45,000/-	1,81,215/-	20.01.2010
Total	6,08,976/-	1,05,000/-	7,13,976/-	-

16.6 The opening bank balance as on 02.04.2008 was Rs. 63,282.42. Undisputedly, the appellant is doing agriculture since past and is showing agricultural income. Undisputedly, appellant's father, late Shri Rawel Singh was also engaged in agricultural activities who expired in 1994 at the age of 85 years. Appellant's mother, Smt. Sunder K.aur had the benefit of income and property

of her late husband. Undisputedly, she expired on 25/12/2008. it is seen that Rs. 15,00,000/-0 was deposited in her account which is included in the aforesaid sum of Rs. 47,77,500/-.

16.7 Considering the totality of the facts and circumstantial evidences, the claim of the appellant that he and his mother were having savings since past years out of known sources cannot be rejected in toto. It is seen that the documentary evidences have been filed showing sale of agricultural land at Rs. 28,57,102/-. The claim of the appellant is that entire deposit of Rs. 47,77,500/- worked-out by the AO is out of past savings, in the absence of any direct evidence filed by the appellant with regard to savings utilized by him for aforesaid deposits into bank, I have no alternative but to estimate his savings available with him and his mother, Considering the totality of the circumstances, in my considered view, the ends of justice would meet if the accumulated savings of the appellant and his mother is taken at Rs. 20,00,000/-which could have been available with them for deposits into the bank.

16.8 Thus, the appellant gets relief of Rs. 23.77.500/- (Rs.3,77,500 + Rs. 20,00.000). Accordingly, the addition of Rs. 47,77,500/- is reduced to Rs. 24,00.000/-.”

14. The DR though relied on the order of AO but could not point out any specific error in the above quoted order of CIT(A). Hence, we find no good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

15. The cross objection filed by the assessee is in support of the order of CIT(A). As the assessee has no grievance against the order of CIT(A), therefore, the cross objection filed by the assessee is infructuous and accordingly dismissed.

16. In the result, appeal filed by the Revenue and cross objection filed by the assessee, both are dismissed.

Order pronounced in the Court on Wednesday, the 17th Day of January, 2018 at Raipur.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Raipur; दिनांक Dated 17/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur