

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.548/Ind/2016  
Assessment Year: 2008-09**

Shri Naresh Modi L/H Basantlal Modi, 17/2 murai Mohalla, Indore	<b>बनाम/ Vs.</b>	ITO, 3(2) Indore
(Revenue)		(Respondent )
P.A. No.AYJPM8148C		

Appellant by	Shri Deshpande, CA
Respondent by	Shri K. G. Goyal Sr. DR
<b>Date of Hearing:</b>	<b>09.01.2018</b>
<b>Date of Pronouncement:</b>	<b>31 .01.2018</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 29.02.2016 pertaining to A.Y. 2008-09. The assessee has raised following grounds of appeal:

*"1. The Learned CIT(A) has erred in confirming the action of Learned Assessing Officer for issuance of notice under section 148 of the Income Tax Act, 1961, when all the relevant facts were discussed in original assessment.*

*2. The issuance of notice u/s 147 is bad in law and order passed thereon u/s 144/147 of the Income Tax Act, 1961 is also bad in law and deserves to be quashed.*

*3. The Ld. CIT(A)-II, Indore has erred in confirming the addition made by the Learned AO of Rs.6866000/- on account of sale of property by applying provision of section 50C of the Income Tax Act, 1961.*

*The sale was made in the assessment year 2007-08 and the matter is subject matter of Assessment year 2007-08 not assessment year 2008-09. Earlier the same fact was accepted and the Ld. AO has passed an order u/s 143(3) of the Income Tax Act, 1961 accepting the same fact. The addition made during the assessment year 2008-09 are bad in law and hence be deleted.”*

2. Briefly stated facts are that the case of the assessee was reopened for assessment and assessment u/s 144 r.w. section 147 was framed vide order dated 21.03.2014. During the course of assessment no one appeared on behalf of the assessee, therefore, the AO, on the basis of material available on record made addition of Rs.68,66,000/- by invoking the provisions of section 50C of the Act in respect of the sale value of the property of the assessee.

3. Aggrieved by this the assessee filed an appeal before the Ld. CIT(A) who after considering the submissions dismissed the appeal. Now the assessee is in further appeal before the Tribunal.

4. Ground No.1 & 2 are against reopening of the assessment.

Ld. counsel for the assessee reiterated the submission as made in the written submissions. He submitted that the issuance of notice u/s 148 is bad in law since all the necessary material was filed before the AO, who after considering all the facts and examining all the documents, AO accepted the assessee's contention that the capital gains is not taxable during the A.Y. 2008-09. The

issuing of notice of the same set of fact is nothing but change of opinion in the reopening of the assessment is bad in law. Therefore, the assessment so framed deserves to be annulled on this ground alone.

But on the contrary, Ld. DR opposed the submissions and submitted that AO has not applied his mind on this aspect, therefore, there is no question of change of opinion.

5. We have heard the rival contentions and perused material available on record and gone through the orders of the authorities below. As per the reasons to believe the ground for reopening is that a capital asset was sold by Shri Late Shri Basantill Modi on 29.11.2006 to M/s. Aviral Buildcon Private Limited for a consideration of Rs.17,51,000/- and all payments were also received before 02.06.2006. But the sale deed was registered on 19.02.2008. The market value for stamp duty purpose is valued at Rs.68,66,000/-. But no capital gain had been offered for the period under consideration.

It is the contention of the assessee that this assessment was reopened on the basis of change of opinion since all material was placed before the AO during the original assessment. The assessment u/s 143(3) of the Act was passed on 08.12.2010 in that order, the AO has examined the issue of capital gain and observed as under:

*“He submitted that the land was actually sold only for Rs.17,51,000/- but the stamp valuation authority had valued the land at Rs.68,66,000/- for stamp duty purpose. It was asked as to why not the value of land is adopted at*

*Rs.68,66,000/- for capital gain purpose. The case was adjourned for 20.09.2010. On this date, Shri Dharmendra Joshi, attended and seek adjournment. On this request the case was adjourned for 04.10.2010. On this date and on 11.10.2010, the assessee seek adjournment on 27.10.2010, Shri Pramod Garg attended. Case was discussed with him and the case is adjourned for 02.12.2010. Being on compliance, notice u/s 142(1) was issued on 03.12.2010 fixing the case for 08.12.2010. On this date, Shri Garg attended and case was discussed with him.*

*3.It is submitted that on 29.05.2006, the assessee had sold plot no.6 of an area 10001sq feet (929.46sq meter) in Khandelwal Nagar Village Chitavad, Tehsil & Distt Indore to M/s Aviral Buildcon private Limited through Director Shri Anil s/o Girdhari Lal Khndelwal for a consideration of Rs.17,51,000/-. No capital gain had been worked out neither there is any claim of exemption of capital gain. In this respect to it is explained that the registry of the sale deed was executed in FINANCIAL YEAR 2006-07. But, since the stamp duty was not fully paid and hence, the registry was released in FINANCIAL YEAR 2007-08. Actual possession was also delivered in FINANCIAL YEAR 2006-07. In support of agreement; copy of the sale deed of plot had been produced.*

From the above observations it is clear that the AO had examined the issue of capital gain, however, he had not applied his mind on the issue whether section 50C would be applicable at not, therefore, the contentions of the assessee that the reassessment is mainly on the basis of change of opinion cannot be accepted. This ground of the assessee's appeal is rejected.

6. Ground No.3 is against confirming the addition made by the Assessing Officer on account of sale of property by applying provision of section 50C of the Income Tax Act, 1961.

Ld. counsel for the assessee reiterated the submissions as made in the written submission the income is not taxable during the year under consideration. The sale deed was executed on 02.06.2006 and was produced before the registry on the same date. However, the stamp valuation authority released the document after computing the stamp duty subsequently, in the subsequent financial year.

Ld. counsel for the assessee submitted that as per section 2(47) transfer was completed during the F.Y. 2006-07 relevant to the A.Y. 2007-08. Hence the capital gain cannot be taxed after applying the provision of section 50C of the Act in the year under consideration.

On the contrary Ld. DR opposed the submissions and submitted that judgment of Hon'ble High Court of Calcutta, in the case of Bagri Impex (P) Ltd. vs. ACIT 259 CTR (Cal) 553, the issue has been decided in favour of the Revenue.

On the contrary Ld. AR for the assessee submitted that the order of the Hon'ble High Court of Calcutta has been stayed by the Hon'ble Supreme Court and the issue is pending before the Hon'ble Supreme Court.

7. We have heard the rival contentions and perused material on record. The undisputed facts are that the assessee has presented the documents for registration during F.Y. 2006-07. However, the document was registered and released in the F.Y. 2007-08. The sole basis for reassessment and re-computing the capital gain is that the stamp valuation authority computed the value of property at the

higher price than declared by the assessee. We find that the assessment was completed u/s 144, therefore, assessee had no opportunity to make objection against adopting value adopted by the stamp valuation authority. The issue whether the transfer was completed during the F.Y. 2006-07 or 2007-08 remained unexamined under these facts we deem it proper for the interest of justice that the assessee should be given an opportunity to present its case, with regard to the issue whether the transfer was completed during the F.Y. 2006-07 or in the F.Y. 2007-08, hence the assessment order on this issue is set aside. The AO is directed to decide this issue afresh after considering the material furnished by the assessee and case laws applicable on the facts of the present case. This ground of the assessee's appeal is allowed for statistical purposed.

8. In the result, the appeal of the Assessee in ITANo.548/Ind/2016 pertaining to A.Y. 2008-09 is hereby partly allowed for statistical purposed.

*Order was pronounced in the open court on 31 .01.2018.*

Sd/-  
(MANISH BORAD)  
CCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 31/01/2018

*Patel. P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Private Secretary/DDO, Indore**