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

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

आयकर अपील सं./ITA No. 478/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

Smt. Chatru Bai W/o late Shri Nathu Lal Village: Borkhera,Tehsil: Ladpura, Kota	बनाम Vs.	The ITO Ward- 2(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AWVPB 8125A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Shrawan Kumar Gupta, Advocate
राजस्व की ओर से/ Revenue by :Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख/ Date of Hearing : 17/01/2018
घोषणा की तारीख/ Date of Pronouncement : 19 /02/2018

आदेश/ ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the ld. CIT(A), Kota dated 25-03-2014 for the assessment year 2008-09. The ld.AR of the assessee vide application dated 11-01-2018 submitted the revised grounds of appeal as under:-

> ''1.1. The impugned order u/s 144/148 dated18-03-2014 is bad in law and on facts of the case for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2. The AO has grossly erred in law as well as on the facts of the case in passing the ex-partie assessment order without providing the adequate and reasonable opportunity of being heard in gross breach of law. Hence, the order so passed may kindly be quashed and the additions so may kindly be deleted in full.

3.1 Rs. 35,06,490/-: The CIT has grossly erred in law as well as on the facts of thecae in sustaining the addition of Rs. 34,06,490/- on account of Long Term Capital Gain on sale of agriculture land and the AO and ld. CIT(A) both also erred in taking the higher value adopted by the Stamp Authority in place of actual sale consideration mentioned in sale deed and received by the assessee while determining the LTCG. Hence, the addition so made by the and confirmed by the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be deleted in full.

3.2 The ld. CIT(A) has grossly erred in law as well as on the facts of the case in not allowing the deduction u/s 54B on the purchase of new assets for which the assessee is entitled. Hence, the deduction so denied by the AO and the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be directed to allow the same.

4.0 The ld. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C. The appellant totally denies it liability of charging of any such interest. The interest so, charged, being contrary to the provisions of law and facts, may kindly be deleted in full.''

2.1 At the outset of the hearing, the Bench observed that the appeal filed by the assessee is late by 1101 days for which the ld. AR of the assessee filed the application for condonation of delay with following prayers.

> '1. It is submitted that the applicant is an individual and not income tax assessee. She is illiterate and widow lady. In this case, the assessment was completed on 20-12-2010 u/s 144/148 for ayy2008-09 against which the assessee had filed the appeal before the ld. CIT(A), Kota, who has decided the appeal of the assessee vide order dated 25-03-2014.Hence, the appeal was to be filed on or before Ist June, 2014 but the same is being filed around 3 years late.
>
> 2. As stated by the assessee the reason for late filing was that the order was received by the counsel of the assessee who was at Kota, who has sent the order to the assessee. The assessee is illiterate widow lady.She lives alone and not keeping well and suffering from various diseases. The assessee could not understand about the result or meaning of order. The children of the assessee were also not much literate and not giving any attention towards the assessee. However, when the recently the Tax Recovery Officer called to the assessee regarding the demand and penalty and told the assessee that your appeal has been dismissed by the ld. CIT(A), Kota and you should file the second before the Income Tax Appellate Tribunal, Jaipur with the condonation of delay. Thereafter the assessee contacted to the Vakil/CA who gave different opinion. At last the advocate after hearing the facts and circumstances advised to file the appeal immediately looking to the nature of additions and record and on the experience of substantial relief. Thus due to the above reason, the appeal could not be filed within time which was not intentional and was beyond the control of the assessee. In support of the same, the assessee filed her

affidavit narrating the reasons for not filing the appeal in time.

3. The ld.AR of the assessee relied on various case laws including the decision of Hon'ble Apex Court in the case of Collector, Land & Acquisition vs Mst. Katiji & Others (1987) 167 ITR 471 (SC)

2.2 The Bench has heard the rival contentions and perused the materials available on record. Taking into consideration the facts and circumstances of the case narrated by the assessee, it is observed that there is sufficient cause in preventing the assessee to file the appeal in time. Hence, the delay in filing the appeal by the assessee is condoned.

3.1 Apropos Ground No. 1.1, 1.2 and 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

> ‘’5.32.The assessee challenged reopening of the assessment u/s 148 on the ground that no notice was served on the assessee and that notices were not issued on correct address of the assessee. It was also pleaded that the same AO passed assessment orders in the case of assessee and the fact of new address of Akshardham Colony was acknowledged by AO.
>
> I have gone through the case record and it was seen that notice u/s 148 was served on Shri Jitendra Kushwah on the last known address of the assessee. Shri Jitendra Kushwah is son of assessee.
>
> On a subsequent occasion, the AO tried to serve the notice u/s 142(1) through Police. In the report submitted by

Circle Incharge of the Local Police Station, it was stated that on the given address, elder son of assessee, Shri Hanuman was present who stated that their mother has gone somewhere for last 10-11 months, without intimating them and the notice was served on his son.

In the of the above, I am of the opinion that the assessee deliberately avoided service of notice. Now the question arises whether service of notice on elders son of assessee can be treated as proper service or not.

Service of notice is to be made as per section 282 of the I.T. Act. Section 282 provides that personal service of notice is to be made in a manner provided under the Code of Civil Procedure, 1908, Sub-rule 15 of Code of Civil Procedure, related to service of notice provided as under:-

> *''Where in any suit, the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.''*

From the above, it can be concluded that assessee was not available on the given address and that she had not appointed any agent for receiving notices and that there was no likelihood of her being found at the residence within a reasonable time. Therefore, service of notice on the adult son of assessee has to be treated as proper service of notice.

This ground of appeal is therefore, dismissed.''

3.2 The Bench has heard both the parties and perused the materials available on record. During the course of hearing, the Bench noted that the ld.AR of the assessee could not advance any contrary material against the order of the ld. CIT(A). Hence, for want of any contrary material against the order of the ld. CIT(A), the Bench declines to interfere with the order of the ld. CIT(A) on the issues raised as Ground No. 1.1, 1.2 and 2 above by the ld.AR of the assessee which are dismissed.

4.1 Apropos Ground No. 3.1 & 3.2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

> ''The assessee claimed that he has invested the sale proceeds in the property and therefore, exemption u/s 54B should be allowed.
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> It was seen that the assessee has purchased the property in the name of her sons, Shri Jitendra Kumar Kushwah and Shri Hanuman Prasad Kushwah. The assessee placed its reliance on various judgements, however, the facts of the cases were different, in the case (327 ITR 278), land was purchased in joint name whereas in the case of assessee, the land was purchased solely in the name of assessee's sons. The other cases were not related to section 54B. Therefore, I am of the opinion that the assessee can claim relief u/s 54B only when the land was purchased in his/ her name, therefore, the assessee was not entitled for benefit u/s 54B.
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> This ground of appeal is therefore, dismissed.''

4.2 During the course of hearing the ld.AR of the assessee prayed for deletion of addition of Rs. 34,06,490/-sustained by the ld. CIT(A). During the course of hearing, the ld.AR of the assessee filed the written submission which has been taken into consideration while adjudicating this ground of appeal of the assessee.

4.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

4.4 The Bench heard the rival contentions and perused the materials available on record. It is noted from the available records that the assessee had sold agriculture land with other Co-owners for the consideration at Rs.22,00,000/- and the stamp duty authority for the purpose of stamp duty had taken the value of the same at Rs.49,50,000/-. The AO had also adopted the same value and calculated the LTCG at Rs. 34,06,490/- vide page 3 of the assessment order. In first appeal the assessee challenged the LTCG and also prayed for deduction u/s 54B. The ld. CIT(A) has denied the deduction u/s 54B by observing that the investment in the new agriculture land has been done in the name of her sons Sh. Jitendra Kushawah and Sh. Hanuman Prasad. Hence the deduction u/s 54B is not allowable and the deduction is allowable in the

name of assessee herself. The ld. A/R of the assessee has drawn the attention of the bench towards computation of total income placed at Paper Book 103 where the assessee calculated the LTCG at Rs.11,41,272/- as per sale deed and consideration received and the assessee further claimed deduction u/s 54B of Rs.20,19,540/-. The Investment is made in the name of her sons and copy of sale deed are placed at pages 12 to 43 of the paper book. The ld.AR of the assessee stated that the assessee is a very old illiterate widow lady of 70 years. The assessee has sold the agriculture land jointly and thereafter she purchased new agriculture land in the name of her sons Sh. Jitendra and Hanuman. The reason of purchasing of new land in the name of her sons was that the assessee is a very old, illiterate lady of 70 years and not having good health. Hence she was advised by the lawyers and relatives that after completing her age the property automatically shall go in the hands of her sons as per law of succession and shall transfer in their name otherwise they have to do many legal formalities and to incur expenses. Hence in order to avoid the difficulties and extra money burden, she was advised to purchase the property in the name of her sons. The assessee being a very old illiterate widow lady of 70 years was not aware about

the complexity of Income tax laws that is why she had purchased the new agriculture land in the name of her sons. During the course of hearing, the ld.AR of the assessee has drawn the attention of the Bench to the recent decision of the Honble Raj. High Court in the case of of Sh. Mahadev Balai V/s ITO Ward 7(2), Jaipur in DBIT A No. 136/2017 dt. 07.11.2017 where it has been held as under:-

> "7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee.
>
> 7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will be considered a part of investment in the land and same is required to be accepted."

It is also pertinent to mention that Honble Raj. High Court in the case of Late Mir Gulam Ali Khan vs CIT,165 ITR 228 held that the word "assessee" must be given a wide and liberal interpretation so as to include

his legal heirs also. It is noted that the decision of the Honble Raj. High Court in the case of Shri Mahadev Balai vs ITO (supra) is also applicable in the present case. The assessee being a widow lady and her sons are only her legal heirs and the investment made by her in the property in the name of her sons and as per above decision the claim u/s 54B is allowable. Hence the AO is directed to allow the deduction u/s 54B of Rs. 2019450/-. It is further noted from the available records that assessee had sold the agriculture land for Rs.22,00,000/- to M/s. Arihant Educational & Charitable Trust on 22-02-2008. The Registrar of property has taken the value of said property for the stamp duty purpose at Rs. 49.50 lacs which appears higher than actual sale consideration mentioned in the sale deed. The ld.AR of the assessee relied on the decision of Hon'ble Kerala High Court in the case of CIT v/s Supriya Enterprises 232 ITR 887(Ker). in which it is held that the registered documents reflect the price of the land which is a piece of evidence and the same cannot be discarded. The ordinary rule is that apparent state of affairs is real unless contrary is proved and the burden of proving the contrary lies on the person who assessed/alleged it. The ld.AR further relied on the decision of Hon'ble Apex Court in the case of Daulat Ram

Rawat Mull 87 ITR 349 (SC). The ld.AR of the assessee further relied on the decision of Honble Rajasthan High Court in the case CIT v/s K.K. Enterprises 178 Taxman 187(Raj.)/13 DTR 289 wherein it has been held that

> *" AO determined the sale price of the plots by adopting the rate of Rs. 40 per sq.ft. on the basis of rate taken by sub registrar and made addition to assessee's income not justified. Apparently, there was no reliable material on record before the assessing authority to assume sale of plots at Rs. 40 per sq. ft.. In the absence of any evidence on record, it cannot be presumed hat land has been sold by the assessee at a higher price than the consideration shown in the registered sale deeds- Rates of property fixed by the Stamp valuation Authority for registration purpose cannot be applied to arrive at the price for which the property might have been sold*".

The ld.AR of the assessee also relied on the following decisions.

> '' Recently followed by this Honble Bench in the case of Manoj Dubey in ITA No. 294/JP/2016 dt. 09.06.2017. *Also followed by the Honble ITAT in the case of Sh. Jagdish Chandra Boriwal in ITA No. 216/JD/2017 dt. 01.08.2017. Smt.* Surendra kaur v/s AO in ITA No.547/Jp/2017 and Smt. Kaushalya Devi Khandelwal in ITA No. 184/Jp/2016 dt.06.10.2017.''

In view of the above deliberations, case laws (supra), it is noted from the assessment order that the AO has not brought any other material that the assessee has in fact or actually has received the more or excess sale consideration than sale price mentioned in the sale deed. He has only relied upon the value of Stamp authority which has been taken the same for stamp Duty purpose. The AO has not tried to get the actual price if in

case of any doubt. Hence, in view of the above Judgments of the Hon'ble Raj. High Courts and decision of Tribunal, the addition made by the AO is liable to be deleted. Thus ground No. 3.1 & 3.2 of the assessee are allowed.

5.0 The Ground No. 4 is regarding charging of interest u/s 234A, 234B & 234C which are mandatory and consequential in nature.

4.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19 /02/2018.

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 19 /02/ 2018
*Mishra
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:
1. अपीलार्थी / The Appellant- Smt. Chatru Bai, Kota
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2 (3), Kota
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 478/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar