

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

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 1009/JP/2017
निर्धारण वर्ष/Assessment Year: 2014-15

Smt. Trishla Jain 1, Jain Medical Hall Opp. Government Hospital Lalsot (Dausa) – 303 503	बनाम Vs.	The DCIT Circle- Bharatpur Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AWWPJ 0551 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Anoop Bhatia, CA
राजस्व की ओर से / Revenue by: Shri J.C. Kulhari, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 13/03/2018
घोषणा की तारीख / Date of Pronouncement : 04 /04/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A),
Alwar dated 10-10-2017 for the Assessment Years 2014-15 raising
therein following grounds of appeal.

“1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the AO in making the addition of Rs. 55,10,833/- to the total income by disallowing legitimate exemption claimed by the assessee under the provisions of section 54 as well as 54F of the I.T. Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case.

Relief may please be granted by allowing the exemptions as claimed by the assessee under section 54 & 54F of the I.T. Act, 1961.

2. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the addition of Rs. 2,63,887/- made by AO as concealed income of the assessee under section 271(1)(c) of the I.T. Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case.’

2.1 Apropos Ground No. 1 of the assessee, brief facts of the case are that the assessee electronically filed the return of income on 31-08-2014 declaring total income of Rs. 21,09,060/-. The case of the assessee was selected for limited scrutiny through CASS and accordingly notice u/s 143(2) of the Act was issued on 21-09-2016 by the ITO, ward Behror which was served on the assessee. Further notice u/s 142(1) of the Act alongwith questionnaire was issued on 17-10-2016 to complete the assessment proceeding. The Id.AR of the assessee attended the assessment proceeding time to time and furnished the details before the assessing officer. The assessee had declared long term capital gain of Rs. 21,09,057/- after reducing indexed cost of acquisition of Rs. 33,24,060/- from total sales consideration of Rs. 1,09,44,000/- on transfer of property situated at Plot No. C-95, UCO Bank Ke Samne, Naya Katla, Dausa. The assessee claimed deduction u/s 54 of the Act of Rs. 55,10,883/- as under:-

S.N.	Section under which deduction claimed	Amount of deduction (Rs.)	Cost of new asset (Rs.)	Date of its acquisition / construction
1.	54F	25,28,068/-	25,28,069/-	16-09-2014
2.	54F	29,82,816/-	43,84,492/-	16-09-2014
	Total deduction claimed	55,10,883/-		

The AO observed that the assessee invested the proceeds of transfer into a new residential house at Flat No. 303, 3rd Floor, SDC Aura, Plot No. B-1, Kisan Marg, Near Teja Ji Temple, Barkat Nagar, Tonk Road, Jaipur. The Registered deed dated 16-09-2014 was submitted before the AO. The AO during the course of assessment proceeding required the assessee to furnish the following information.

“On perusal of the return of income for the year under consideration, it is noted that you have sold 3 shops and one property having commercial area also to various persons on 22-03-2014. In this context you are required to furnish following information and documents.

- 1. Certified copy of will.*
- 2. It is also noticed that you have not utilized the amount of capital gain towards the purchase of new asset made within one year before the date on which the transfer of the original asset took place or which has not utilized for the purchase of construction of new asset before the date of furnishing the return of income u/s 139(1) of the Act and also failed to deposit the amount of capital gain in the case of section 54 or net sale consideration in the case of section 54F of the Act in the Capital Gain Account Scheme, 1988 as per provisions of sec 54(2) and 54F(4) of the Act before the due date of furnish the return u/s 139(1) of the Act i.e. 31-07-2014 in your case. Please furnish show cause as to why the exemption claimed u/s 54 and 54F of the Act should not be disallowed and added to your total income for the year under consideration.”*

The Id.AR of the assessee filed the reply before the AO but the AO was not convinced with the submissions of the assessee and the case laws relied upon by the assessee. The AO noted that it is clear from the submissions of the assessee that the assessee had purchased a residential property on 16-09-2014. The AO noted from the records available before him that the assessee did not utilize the amount of net sale consideration in purchasing or constructing the new residential house before the due date of furnishing the return u/s 139(1) of the Act i.e. 31-07-2014. According to the AO, the assessee had to deposit the entire sale consideration in the Capital Gain Account Scheme, 1988. On asking about it by the AO, the assessee submitted before the AO as under:-

“the sale proceeds of property were receivable through postdated cheques appearing in sale deed copies submitted alongwith our letter dated 26-10-2016. Therefore, said consideration was received by the assessee in bits and pieces between 26-03-2014 to 26-08-2014. The assessee was of the bona fide belief that if all the cheques given by the purchaser are not cleared the sale transaction cannot be said to be complete lawfully and in case of any kind of dispute the assessee may be required to refund even the part amounts received by her to claim here title back on the property sold by her. This, before the clearance of full amount of consideration received by way of postdated cheques, which finally took place on 26-08-2014 the assessee was neither in the position to the invest the money into a new property nor said amount could be deposited in the capital gain account scheme, on a safe side even.”

The AO thus noted that in the instant case the assessee had acquired the residential plot as per registered deed dated 16-09-2014 which is after the due date of filing the of return i.e. 31-07-2014 for the Assessment Year under consideration. Hence, the AO made the addition of Rs. 55,10,883/- by observing as under:-

“12. On perusal of the bank accounts maintained by the assessee, it is seen that the assessee neither deposited the amount of sale consideration which had been paid by the purchaser at the time of registration of the documents before the Sub-Registrar, in the Capital Gain Account Scheme nor purchased or constructed a residential house before the due date of furnishing the return i.e. 31-07-2014 as stipulated in the section 54(2) and 54F(4) of the I.T. Act, however, the same amount had been utilized by the assessee for other purposes.

13. In view of the above fact, it is held that the assessee had not deposited the amount of Rs. 55,10,883/- in the Capital Gain Account Scheme, 1988. In such a situation, the exemption from long term capital gain will not be allowed and added to the total income of the assessee for the Assessment Year under consideration.”

2.2 In first appeal, the Id. CIT(A) has confirmed the action of the AO by observing as under:-

5.4 I have considered the above mentioned facts of the case. The basic question involved in this case is whether the appellant is fulfilling the condition specified in section 54 and 54F of the Act to claim the deduction under the provisions of the Act or not?

It would be prudent to go into the question of sec 54 and 54F of the Act.

54(2)

54F (1)...
(4)

If we look at the provision of section 54 and 54F of the Act, the salient features that are applicable in the present case are as under:-

1. The incidence of capital gain arisen out of transfer of the property covered under section 54 and 54F is paramount.

2. The receipt of sale consideration is not recognized factor for applicability of section 54 and 54F.

3. The provision of the Act is very unambiguous i.e. if the assessee wants to avail deduction u/s 54 and 54F, the unutilized part of the capital gain has to be deposited in the account in any such bank or institution as may be specified in and utilized in accordance with, any scheme 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.

4. That 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.

Now in view of the foregone provision of the act, let us examine the facts of the present case.

1. That there is no doubt that the transfer of the property in question had taken place and the capital gain had arisen during the relevant period to A.Y. 2014-15. The assessee herself has claimed the capital gain in the return of income.

2. In this case the due date of filing of return 139(1) of the Act was 31-07-2014.

3. That no unutilized amount arisen as a result of capital gain has been deposited in Capital Gain Deposit Scheme of the bank.

Thus in view of the above unambiguous provision of Act and the factual matrix as discussed above, it is my considered view that the AO is justified in denying the benefit of section 54 and 54F of the Act. Accordingly, the addition of Rs. 55,10,833/- is sustained and the appellant's ground of appeal on the issue is dismissed.''

2.3 During the course of hearing, the Id.AR of the assessee prayed for deletion of addition of Rs. 55,10,833/- confirmed by the Id. CIT(A). The Id.AR of the assessee filed the written submission which has been taken into consideration.

2.4 On the other hand, the Id. DR supported the orders of the lower authorities.

2.5 We have heard the rival contentions and perused the materials available on record. In this case, it is noted that the AO made the addition of Rs. 55,10,883/- on the ground that the assessee neither deposited the amount of sale consideration which had been paid by the purchaser at the time of registration of the documents before the Sub-Registrar in the Capital Gain Account Scheme nor purchased or constructed a residential

house before the due date of furnishing the return i.e. 31-07-2014 as stipulated in the section 54(2) and 54F of the I.T. Act, 1961. The AO further noted that the same amount had been utilized by the assessee for other purposes. In first appeal, the ld. CIT(A) has confirmed the action of the AO. During the course of hearing the ld.AR of the assessee prayed for quashing of the assessment order with following submissions.

1. The AO made a wrong observation that assessee received entire sales consideration of plot before closing the financial year 2013-14.
2. The AO set aside to consider the case laws cited by the assessee in his submissions during the course of assessment merely treating the issue in the assessee's case being different which is not so.
3. Section 54 as well as section 54F both of the Income Tax Act, 1961 provide the time limit to invest the capital gain or net consideration of the capital asset sold before the expiry of time limit prescribed under section 139 which duly includes the time limit of filing return within section 139(4) time limit even.
4. The assessee's genuineness of not using sale proceeds till the clearance of last cheque was not at all the given ear by AO which proves prejudice on the part of the AO rather than acting judiciously.
5. Ld. CIT(A) did not appreciate the real facts and circumstances of the case as well as position of law and did not decide the case on merits.

Taking into consideration the various factual aspects which needs verification at the level of AO, we hold that that it will be in the interest of equity and justice to restore the matter to the file of the AO to decide it

afresh by providing adequate opportunity of being heard to the assessee. Thus the Ground No. 1 of the assessee is allowed for Statistical purposes.

3.1 In Ground No. 2, the assessee is aggrieved that the Id. CIT(A) has erred in confirming the addition of Rs. 2,63,887/- made by the AO as concealed income u/s 271(1)(c) of the Act. The AO during the course of assessment proceeding observed that the assessee had filed revised ITR for A.Y. 2014-15 on 25-10-2016 declaring capital gain of Rs. 23,02,515/- and total income of Rs. 23,02,515/- whereas in the original return filed on 31-08-2015 the assessee had declared capital gain of Rs. 21,09,057/- and total income of Rs. 21,09,057/-. The assessee had submitted the reply to the query raised by the AO as to the issue in question but the AO did not find it convincing with following observation.

“14....the reply of the assessee has been considered carefully. The assessee was not entitled to file revised return after expiry of one year from the end of the relevant A.Y. or before the completion of the assessment whichever is earlier in the light of section 139(5) of the Act.

Therefore the return filed by the assessee on 25-10-2016 is an invalid/ belated return and no cognizance can be given...

The AO further noted that in other words the assessee had computed Sales consideration of Rs. 1,09,44,000/- while the Stamp Duty value is Rs. 1,12,07,887/-. The AO took the support of Section 50C(1) of the I.T.

Act, 1961 “where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed (or assessable) by any authority of a State Govt. (hereinafter in this section referred to as the “Stamp Valuation Authority” for the purpose of stamp duty in respect of such transfer the value so adopted or assessed (or assessable) shall for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. The AO taking into consideration the provision of Section 50C(1) of the Act adopted the Stamp Duty Value at Rs. 1,12,07,887/- for capital gain instead of Rs. 1,09,44,000/- . The AO thus made an addition of Rs. 2,63,887/- and noted that the return was revised only after the case was selected for scrutiny and further noted that if the case of the assessee was not selected for scrutiny the concealed income could not be unearthed. Therefore, the assessee is liable to levy of penalty u/s 271(1)© of the Act.

3.2 In first appeal, the Id. CIT(A) has confirmed the addition of Rs. 2,63,887/- made by the AO by observing as under:-

“6.3 I have considered the order passed by the AO and submissions filed by the appellant. On the reasons and facts as given in adjudication of ground of appeal No. 1,2, and 3, the addition of Rs.

2,63,887/- is sustained. Appellant's ground of appeal on the issue is dismissed.''

3.3 During the course of hearing, the Id.AR of the assessee prayed for deletion of addition made by the AO amounting to Rs. 2,63,887/- on account of concealed income of assessee u/s 271(1) (c) of the Act. The Id.AR of the assessee further submitted that there was no willful default on the part of assessee in not offering the capital gain as well as exemption by having reference to the stamp duty value of the property. The moment assessee got to know about such mistake the assessee corrected on her own by making payment of difference in tax liability.

3.4 On the other hand, the Id. DR supported the order of the lower authorities.

3.5 We have heard the rival contentions and perused the materials available on record. We have taken into consideration the submissions of the Id.AR of the assessee but it did not find merit to controvert the findings of the lower authorities. In such a situation, we find no reason to interfere with the order of the Id. CIT(A). Thus Ground No. 2 of the assessee is dismissed.

9.0 In the result, the appeal of the assessee is partly allowed for Statistical purposes..

Order pronounced in the open Court on 04 -04-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

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

जयपुर /Jaipur
दिनांक /Dated:- 04 /04/ 2018

*Mishra

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

1. अपीलार्थी /The Appellant- Smt. Trishla Jain, Lalsot (Dausa)
2. प्रत्यर्थी / The Respondent- The DCIT, Circle - Bharatpur
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.1009/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar