

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 786/JP/2017  
निर्धारण वर्ष/ Assessment Years : 2008-09

Smt. Kamla Choudhary C-4, Hathi Babu Marg, Bani Park, Jaipur (Raj.)	बनाम Vs.	ITO, Ward-3(4), Income Tax, Jaipur (Raj.)
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ADDPC8911C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mohan Choudhary (Adv.)  
राजस्व की ओर से / Revenue by: Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 29/05/2018  
उदघोषणा की तारीख / Date of Pronouncement : 01/06/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 20.09.2017 for Assessment Year 2008-09 wherein the assessee has taken the following grounds of appeal as under:-

"01. That under the facts and circumstances of the case, the Id. Commissioner (Appeals)-1, Income Tax, Jaipur Vide order dated 20.09.2017 has grossly erred in confirming the enhanced returned income of the appellant-assessee by Rs. 60,283/- levied by the Assessing Officer, Ward-3(4), Income Tax Jaipur in their

*order passed on 05.02.2016 u/s 143(3) of the Act, thereon treating the transfer of capital asset under the family settlement/arrangement between brother's wife and her brother-in-law as short term capital gain liable for tax.*

*2. That the order is bad in law."*

2. The Id AR submitted that the assessee is a house wife and her source of income is rental income. She filed her return of income for the aforesaid assessment year declaring the rental income of Rs.1,19,200/-. To be precise, it is submitted that the father-in-law of the assessee namely, Shri Laxmi Narayan Choudhary executed a transfer/sale deed of a plot of land in favour of the assessee on 02.02.2005 as she was looking after his day-to-day activities in the old age and providing the regular services. Such property was transferred to the appellant-assessee by her father-in-law out of natural love and affection being the gift to his elder daughter-in-law for the stated reason. This has resulted into family dispute and fractions arose among the other family members with the family of the appellant-assessee itself. Accordingly, a civil suit bearing no. 76/2005 was also filed before the Court of Additional District & Session Judge No. 3, Jaipur City, Jaipur by the aggrieved family members against other members including the appellant-assessee and her husband Shri Damodar Lal Choudhary. Ultimately, a settlement was entered into and produced before the Court in which it was decided that they will be bound by earlier distribution mutually decided among the family members in the year of 1995 and

accordingly, to settle the family disputes, the appellant-assessee had to revert/re-transfer the part property in favour of her brother-in-law. Though such transfer/ sale deed dated 24.09.2007 was executed by the appellant-assessee in favour of her brother-in-law namely, Shri Mohan Lal Choudhary, which was also being the party in the suit titled as "Mohan Lal Jat S/o Shri Laxmi Narayan Jat V/s Virendra Kumar, Ram Gopal & Others". This transaction took place as a family settlement/arrangement among family members and not as actual sale or transfer of capital asset liable for levy of income tax.

3. It was submitted by the Id AR that the registry was executed by the appellant-assessee in favour of her brother-in-law merely to settle the family dispute in pursuance of the "Rajinama (settlement)" filed before the Court of law and in compliance of decree passed by the Court. Merely a token amount of Rs.50,000/- was mentioned in the said transfer deed dated 24.09.2007. However, the registering authority adopted the value as Rs.5,60,800/- for stamp duty purpose. Thus, the said value adopted by the sub-register is not applicable in the instant case because the said transaction is only a family settlement/arrangement in pursuance of or in compliance of the Court's decree. It is stated that the transaction is not of actual sale but is a settlement in pursuance of Court's decree. It is, therefore, humbly & respectfully submitted that the provisions of section 50C of the Act are also not applicable in the present case

in view of the aforementioned facts and circumstances of the case.

4. It was further submitted that in the present case, the assessment of the aforesaid appellant-assessee for the said assessment year has been completed on 05.02.2016 adding the income of Rs.60,283/- as short term capital gain sources. It is being alleged that neither the name of the assessee nor her husband Shri Damodar Lal Choudahry name is reflected in the filed suit no. 76/2005 titled as "Mohan Lal Jat S/o Shri Laxmi Narayan Jat v/s Virendra Kumar, Ram Gopal & others" before the district Court regarding the transfer of property on which the capital gain tax is leviable. It has been further alleged that no disputes had arisen between the assessee's family and other family members regarding the transfer of such property in the transfer deed executed by the assessee duly made in favour of Shri Mohan Lal Choudahry on 24.09.2007 which was earlier on 02.02.2005 transferred by the father-in-law in favour of the assessee. Hence, according to the Id. AO, the said transaction of transfer is not a family settlement transaction and thus, section 50C of the Act is applicable. Thus, added the same to the total income of the appellant-assessee u/s 147 of the I.T.Act, 1961.

5. In this regard, it was submitted by the Id AR that the appellant-assessee had duly explained the family relations between the transferor and transferee in relation of such transferred property through the written submission or

documents at the time of hearing along with larger family pedigree. That the relation between the transferor and transferee is of "Dever and Bhabhi". The said property belonged to the father-in-law of the transferor and father of the transferee prior to 02.02.2005. The appellant-assessee is living with her father-in-law namely, Shri Laxmi Narayan Choudahry and due to love and affection & looking after day-to-day activities in the old age, he was happy with the daughter-in-law and through a will, he made transfer of the such property on 02.02.2005 in favour of the appellant-assessee. Later on, due to transfer of such property in favour of the appellant-assessee, family fraction & disputes aroses between the other family members and appellant-assessee family. Therefore, civil suit bearing no. 76/2005 was filed before the Court titled as "Mohan Lal Jat S/o Shri Laxmi Narayan Jat V/s Virendra Kumar, Ramgopal and others" for distribution of the property and in which, ultimately settlement was filed. Accordingly, in compliance of said settlement (Rajinama), the appellant-assessee transferred or reverted the part land on 24.09.2007 out of the such property in favour of her brother-in-law Shri Mohan Lal Choudhary. Both the transferor and transferee are also permanently residing at the same address which is mentioned in the transferred property. All the family members are ill-literate and they did not believe in other mode of transfer except to the sale registry. Therefore, such transaction is only or entirely is a family settlement transaction and section 50C of the Act is not applicable in the instant present case. The main reasons for not fully accepting the explanation of the appellant-assessee is that the

name of the appellant-assessee as well as her husband is not mentioned in the filed suit before the Court and disputes between the family of appellant-assessee & family of other members is also not mentioned in the transfer deed dated 24.09.2007. It is respectfully submitted that it cannot be said that the appellant-assessee and her husband were not affected party in the filed suit. The appellant-assessee and her husband are covered under the word "Others" in the title of the suit. All joint family members of the appellant-assessee's father-in-law as well as family of other members were permanently residing at the said disputed property since beginning.

6. It was further submitted that the said plot was approximately admeasuring 1000 sqyd which was purchased on 26.12.1959 by the father-in-law of the appellant. Out of such entire plot, a piece of plot was transferred by the father-in-law on 02.02.2005 in favour of the appellant-assessee. All disputes were related to such plot. The case was filed before the Court titled as "Mohan Lal Jat S/o Shri Laxmi Narayan Jat V/s Viredndra Kumar, Ramgopal & others" also had their same addresses and for the same property. Therefore, it cannot be said that the appellant-assessee and her husband were not the affected party. The appellant-assessee and her husband are covered under the word "Others" in the title of the suit. It is also humbly submitted that the disputes were settled & in compliance of compromise produced before the Court by the joint family members of the appellant-assessee in the case of civil suit filed.

7. Per contra, the Id DR has relied on the findings of the AO and that of the Id CIT(A) which is reproduced as under:-

*" (1) The brief facts of the case are that during the year under consideration, vide registered sale deed dated 24/09/2007, the appellant has sold an immovable property to Sh. Mohan Lal Chaudhary, brother of the husband of the appellant for a consideration of Rs. 50,000/-, which was valued at Rs. 5,60,800/- by the sub registrar of properties for the purposes of charging stamp duty. The said property was acquired by the appellant through registered sale deed dated 24.02.2005. On the basis of these facts, the AO has invoked the provisions of section 50C of the Act and has computed short-term capital gains on the sale of the property under consideration at Rs. 60,283/- and made the addition of the same to the income of the appellant.*

*(ii) During the assessment proceedings as well as appellate proceedings, it was submitted by the appellant that actually there was no sale or purchase of any immovable property by the appellant and in view of the family settlement, a part of the property received by the appellant from her father-in-law, Sh. Lakshmi Narayan Chaudhary, as a gift, was transferred by her to her brother in law and the token amount of Rs. 50,000 was referred in the sale deed for getting the property registered.*

*(iii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that the appellant has acquired the property through a registered*

*sale deed from her father-in-law and has also sold a part of the said property to her brother in law, again through a registered sale deed. It is pertinent to mention that in the sale deed dated 24.09.2007, it was stated that the appellant has purchased the property from Sh. Lakshmi Narayan Chaudhary. Further, on a perusal of these sale deeds, it is observed that these are silent about any family settlement as claimed by the appellant. It is further noted that the dispute before the court was between Sh. Mohal Lal Jat on the one hand and Shri Virender Kumar and Shri Ram Gopal on the other side. Neither the appellant nor her husband Sh. Damodar Lal was party to the said suit. It may be mentioned that the registered sale deeds are documentary evidences and a very important piece of evidence as registered before a government agency and it cannot be brushed aside easily. Further as per Indian Evidence Act, a documentary evidence can be countered by only a documentary evidence. However, no such documentary evidence have been filed to contradict the contents of the registered sale deeds i.e. one through which the appellant has acquired the property under consideration and the other one through which, the appellant has sold a part of the said property.*

*(iv) Therefore, in view of the above discussion and looking to the totality of facts and circumstances the case, it is held that the AO was justified in making short term capital gains amounting to Rs. 60,283/- to the income of the appellant."*

8. Regarding the findings of the Id CIT(A) that no such documentary evidence have been filed to contradict the contents of

the registered sale deeds, the Id AR submitted a copy of supplementary deed registered with the stamp authorities on 9.2.2018 to the original sale deed dated 24.09.2007 executed between the assessee and Mohan lal Chaudhary stating that the said sale deed has been executed pursuant to Court decree and as part of family settlement. Since the same is an additional evidence which goes to the root of the matter, the same is hereby admitted in the interest of justice and the matter is remanded back to the file of the Id CIT(A) to examine the matter a fresh taking into consideration aforesaid supplementary deed after providing opportunities to both the parties. We therefore don't deem it appropriate to examine the contentions so advanced on merits before us at this stage. The assessee shall however, be at liberty to raise the aforesaid contentions before the Id CIT(A).

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/06/2018.

Sd/-

(विजय पॉल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/06/2018.

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Smt. Kamla Choudhary, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(4), Jaipur

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 786/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar