

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

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

आयकर अपील सं./ITA No. 659/JP/2018
निर्धारण वर्ष / Assessment Year : 2014-15

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| M/s Myra Real Estate Pvt. Ltd., A-8, 1 st Floor, Mall Road, Sector-1, Vidhyadhar Nagar, Jaipur. | बनाम Vs. | The ACIT, Circle-4, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCM 3772 K | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 11/07/2018
उदघोषणा की तारीख / Date of Pronouncement: 13/07/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26.02.2018 of CIT (A), Jaipur for the assessment year 2014-15. The assessee has raised the following grounds as under:-

"1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 41,94,426/- U/s 50C of the IT Act on account of difference between the sales consideration and the value adopted by the valuation officer without appreciating the fact that

DLC rate do not represent the FMV of the property and assessee has brought evidence on record that even at the time of purchase of property, the DLC rate was higher than the FMV of the property.

2. The assessee craves to amend, alter and modify any of the grounds of appeal.

3. The appropriate cost be awarded to the assessee."

The assessee has also filed an additional ground which reads as under:-

"The Ld. CIT(A) has erred on facts and in law in rejecting the contention of assessee that the property under consideration is stock-in-trade and therefore, section 50C is not applicable only for the reason that this issue is not contested before the AO and no such ground is taken before him even when the fact that the property under consideration is stock-in-trade is evident from the annual accounts of assessee available on record."

2. We have heard the Id. AR as well as the Id. DR on admission of additional ground and carefully perused the relevant material on record. In the additional ground the assessee has raised a legal issue of applicability of Section 50C of the Act in case of sale of property in question which was held as stock-in-trade. The Id. AR of the assessee has submitted that the assessee while computing its income has shown the profit from sale of land in question as business income which has not been disturbed by the AO through, the Assessing Officer has made an addition by applying the provisions of Section 50C of the Act. The Id.

AR has further contended that the assessee has raised this plea before the Id. CIT(A) which was not entertained by the Id. CIT(A) on the ground that the assessee did not raise this issue before the AO. The Id. AR has submitted that no new fact is required to be investigated for adjudication of this ground and therefore, the same may be admitted on the basis of the fact available on record. He has relied upon the decision of Hon'ble Supreme Court in case of CIT vs. NTPC Ltd. 229 ITR 383. The Id. AR has referred to the profit and loss account as well as balance sheet and schedule-18 to show that the property in question was part of stock-in-trade and therefore, the profit on sale of the said property is business income of the assessee and provisions of Section 50C of the Act are not applicable. The Id. AR has further contended that this property was purchased by the assessee in the auction of Jaipur Development Authority (JDA) and the purchase consideration itself was very less in comparison to the DLC rate on that date of purchase in February, 2010.

3. On the other hand, the Id. DR has objected to the additional ground raised by the assessee and submitted that the assessee did not raise this plea before the Assessing Officer and even no such issue was raised in the ground raised before the Id. CIT(A). Only submissions

were made by the assessee before the Id. CIT(A) on this issue which were not accepted by the Id. CIT(A). He has relied upon the order of the authorities below.

4. Having considered the rival submissions as well as the relevant materials on record we note that the additional ground raised by the assessee is purely legal in nature and further all the facts and materials are available on the assessment record for adjudication of this ground and no new facts are required to be investigated. We find that the facts which are recorded in the profit and loss accounts and balance sheet as well as computation of income of the assessee are sufficient for adjudication of this issue raised in the additional ground. Accordingly, in view of the decision of Hon'ble Supreme Court in case of CIT vs. NTPC Ltd. (supra) the additional ground raised by the assessee is admitted.

5. Since, this issue involves the verification of the record which is available on the assessment record and therefore, it requires the stand of the Assessing Officer on the factual aspect of the property in question being stock-in-trade and not capital asset as per the books of accounts and computation of the assessee. Once it is found that the property in question was held by the assessee as stock-in-trade all through years then the provisions of Section 50C of the Act would not

apply for computation of the profit on sale of stock-in-trade. Section 50C of the IT Act is part of chapter iv of the Income Tax which deals the computation of income from capital gain. Accordingly, once the property in question is found to be stock-in-trade of the assessee then full value consideration as per the provisions of Section 50C of the Act would not germaine to the controversy. Hence, we set aside the matter to the record of the Assessing officer to verify the record on the aspect of the nature of the property in question being stock-in-trade of the assessee and then decide the issue as per law in light of the above observation.

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

Order pronounced in the open court on 13/07/2018.

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

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

जयपुर/Jaipur

दिनांक/Dated:- 13/07/2018.

*Santosh.

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

1. अपीलार्थी/The Appellant- M/s Myra Real Estate Pvt. Ltd., Jaipur.
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-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. 659/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar