

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. 1034/JP/2017  
निर्धारण वर्ष/Assessment Year: 2007-08

Shri Lallu Ram Yadav Village: Heera Pura Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 2 (3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BUTPR 9268 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Pankaj Kumar Garg, CA  
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 09/07/2018  
घोषणा की तारीख / Date of Pronouncement : 12 /07/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the  
Id. CIT(A)-1, Jaipur dated 03-11-2017 for the Assessment Year 2007-08  
raising therein following grounds of appeal .

- “1. That the AO had erred in initiating the proceedings u/s 147, the said proceedings are illegal and void.
2. That the Id. CIT(A) had erred in disallowing the FMV as on 01-04-1081 and estimating the FMV at Rs. 50,000/-.
3. That the Id. CIT(A) had erred in rejecting the deduction claimed u/s 54F.

4. That the Id. CIT(A) and AO had erred in neglecting the valuation report of registered valuer regarding FMV as on 01-05-2006.

5. That the Id. CIT(A) and AO had erred in treating the value u/s 50C as Rs. 81,58,720/- instead of Rs. 10,00,000/- whereas the value u/s 50C as on date of judgement was Rs. 10,00,000/-.

The assessee has filed the following additional ground praying as legal grounds.

1. That no notice u/s 148 was served on the assessee before completing of assessment proceeding.

2. That AO had not taken approval for reopening of assessment as per sec 151.

2.1 Apropos Ground No. 1 to 5 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

### 3.1.2 **Determination:**

(i) The brief facts of the case are that during the year under consideration the appellant along with his brothers namely S/Shri Madan Lai, Govind Narayan and Munna Lai had sold land at Tagore Nagar, Heerapura to Smt. Krishna Devi wife of Shri Mussadi Lai Yadav vide four separate sale deeds. The sale deeds, executed by the three brothers of the appellant were registered with Sub-Registrar- III, Jaipur and the sale deed executed by the appellant was registered with the Sub-Registrar- IV, Jaipur. It may be mentioned that the Collector (Stamps), Jaipur vide its order dated 23.03.2006 has determined the value of the land sold by the three brothers of the appellant for the purposes of charging stamp duty at Rs. 81,58,722/-. It may be mentioned that in the case of the appellant, the land was sold for a consideration of Rs. 10 Lac which was also accepted by the Sub-Registrar- IV, Jaipur for the purposes of charging stamp duty.

(ii) The appellant has not filed any return of income for the year under consideration u/s 139 of the Act and in view of the information received from ADIT(Inv.), Jaipur, the AO, has initiated proceedings u/s 147 of the Act and has issued notice u/s 148 of the Act on 20.03.2013 which was served through registered post and a copy of which was also served through affixture on 28.03.2013. However, no return of income was filed by the appellant even in

response to notice issued u/s 148 of the Act. The AO has issued various notice including a show cause notice u/s 144 of the Act but again no compliance was made. Further, in respect of three parts of the property sold by the brothers of the appellant, the Collector (Stamps), Jaipur had determined the market value at Rs. 81,58,722/- and since, the appellant was having 1 /4<sup>th</sup> share in the same property sold by the brothers of the appellant to Smt. Krishna Devi, the AO has adopted the sum of Rs. 81,58,722/- as sale consideration u/s 50C of the Act. Further, since, there was no compliance by the appellant before the AO, the AO in the absence of return of income of the appellant as well as non availability of the cost of the acquisition of the property under consideration has taken the cost of acquisition at Rs. Nil and has determined the long term capital gains on sale of the land under consideration at Rs. 81,58,720/- i.e. the entire amount adopted by the Collector (Stamps), Jaipur for the purpose of charging stamp duty.

(iii) In the statement of facts filed with the appeal in Form No. 35, it was submitted by the appellant that the deal under consideration for sale of land had also become disputed and the case is pending for disposal in the court of law and it was still having the possession of the land. It was further submitted that it has received only a sum of Rs. 5 Lac out of the sale consideration of Rs. 10 Lac.

(iv) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted from the registered sale deed dated 01.05.2006 that the appellant has stated to receive a sum of Rs. 5 Lac in cash and remaining amount of Rs. 5 Lac through cheque dated 01.5.2006 and nothing remained outstanding from the buyer Smt. Krishna Devi. It was further stated in the sale deed that the possession of the land was also handed over by the appellant to Smt. Krishna Devi. It is noted from the material placed on record that some dispute has arisen between the appellant, his brothers on the one hand and Smt. Krishna Devi on the other hand which is pending before the court of law. It is noted from the material placed on record in the case of Shri Govind Narayan Yadav, brother of the appellant, for the AY 2006-07 in ITA NO. 483/2013-14 that a suit for issue of temporary injunction was filed by appellant along with his brothers Shri Govind Narayan Yadav and others in relation to their dispute with Smt. Krishna Devi in the Court of Civil Judge (A & B) and Metropolitan Magistrate (East), Jaipur and vide order dated 03.07.2013 in case No. Misc.(Temporary Injunction)/ 332/2012, the temporary injunction as prayed by the petitioners was denied by the Civil Judge, a part of the relevant extract of the above referred order of Civil Judge is reproduced as under:

“सुविधा का संतुलन व अपूरणीय क्षति

10. चूंकि वादग्रस्त भूमि के संबंध में वादीगण का प्रथमदृष्टया कोई स्वामित्व व कब्जा नहीं पाया गया है। अतः वादीगण के पक्ष में यदि कोई निषेधाज्ञा जारी नहीं की गई, तो उन्हें अधिक असुविधा व अपूरणीय क्षति हो, ऐसा प्रकट नहीं होता है। अतः दोनो बिन्दू भी प्रार्थीगण के पक्ष में प्रमाणित नहीं पाये जाते हैं।

11. चूंकि प्रथमदृष्टया केस, सुविधा का संतुलन व अपूरणीय क्षति के बिन्दू प्राथीगण के विरुद्ध प्रमाणित पाये गए हैं। अतः प्रार्थीगण का प्रार्थना पत्र अस्वीकार किए जाने योग्य पाया जाता है।

#### आदेश

12. अतः प्रार्थीगण का यह प्रार्थना – पत्र बाबत अस्थाई निषेधाज्ञा विरुद्ध अप्रार्थीया अस्वीकार कर खारिज किया जाता है।”

(v) Against the above referred order of Civil Judge, the appellant along with his brother Shri Govind Narayan Yadav and others (the petitioners) filed a civil appeal before the Addl. District Judge No. 16, Jaipur and vide order dated 21.05.2013, in Civil Misc. Appeal No. 08/2013, the Addl. District Judge confirmed the above referred order dated 07.03.2013 of Civil Judge and thus, no temporary injunction was granted even by Addl. District Judge, Jaipur. A part of the relevant extract of the same is reproduced as under:

“सुविधा का संतुलन व अपूरणीय क्षति

चूंकि विवादित भूमि के बारे में अपीलार्थीगण का कोई प्रथम दृष्टया स्वत्व और कब्जा नहीं पाया है और प्रथम दृष्टया स्वामित्व और कब्जा नहीं पाये जाने के कारण अगर कोई स्थायी निषेधाज्ञा जानी नहीं की जाती है तो अपीलार्थीगण को कोई ऐसे असुविधा होने वाली नहीं है बल्कि असुविधा प्रत्यर्थी को होगी कि जो जायदा उसने पंजीकृत विक्रय पत्र से खरीदी है, उसका उपयोग उपभोग करने से वंचित हो जाएगी और अपीलार्थीगण ऐसे कोई अपूरणीय क्षति को बिन्दू भी स्पष्ट नहीं कर पाये कि आखिर किस प्रकार से उन्हें क्षति होगी और ऐसे क्षति का आकलन नहीं किया जा सकेगा बल्कि अपूरणीय क्षति का बिन्दू भी प्रत्यर्थी के पक्ष में है कि उसने पंजीकृत विक्रय विलेख से जायदाद खरीदी और अब अस्थायी निषेधाज्ञा का आदेश जारी करी दिया तो उसे अपूरणीय क्षति होगी।

अपीलार्थीगण/प्रार्थीगण अपना प्रथम दृष्टया मामला, सुविधा का संतुलन और अपूरणी क्षति के बिन्दू तीनों ही स्थापित नहीं कर पाये हैं। अतः अपीलार्थीगण/प्रार्थीगण का आवदेन विद्वान अधीनस्थ न्यायालय द्वारा खारिज करने में कोई त्रुटि नहीं की गई है और प्रार्थना— पत्र खारिज होने योग्य होने से खारिज किया गया है। अपीलार्थीगण की अपील खारिज किया जाने योग्य होने और विद्वान अधीनस्थ न्यायालय द्वारा पारित आदेश की पुष्टि किये जाने योग्य है।”

#### आदेश

फलस्वरूप अपीलार्थीगण/प्रार्थीगण द्वारा प्रस्तुत अपील खारिज की जाती है तथा आदेश दिनांक 07.03.2013 विविध दीवानी प्रार्थना— पत्र संख्या 332/12, प्रार्थना पत्र अस्थायी निषेधाज्ञा, लल्लूराम वगै. बनाम कृष्णादेवी, न्यायालय सिविल न्यायाधीश (कनिष्ठ खण्ड) पूर्व, जयपुर नगर द्वारा पारित की पुष्टि की जाती है।

निर्णय की प्रति के साथ विचारण न्यायालय की पत्रावली अविलम्ब लौटाई जाए।”

(vi) Thus, it could be seen from the above decisions of Civil Judge and the

Addl. District Judge that the possession of the property under consideration was found to be with Smt. Krishna Devi and not with **the appellant and his brothers**. It may be mentioned that against the order of ADJ Jaipur, the appellant and his brothers filed a writ petition before the Hon'ble High Court of Rajasthan and vide order dated 31.01.2014 in S.B. Civil Misc. Stay Application No. 18755/2013 in S.B. Civil Writ Petition No. 21812/2013 in the case of Shri Lallu Ram Yadav & Others - Petitioners and ADJ & Others - Responders, it was directed by the **Hon'ble High Court of Rajasthan to maintain status quo as regards the possession, alienation, construction and creation of third party interest in the suit lands, pending the writ petition and the stay application was disposed off**. It may further be mentioned that the registered sale deed executed by the appellant for sale of the land has not been cancelled till the date of this order.

(vii) During the appellate proceedings, in the case of Shri Govind Narayan Yadav, brother of the appellant, the reliance was placed on the case of Hirer Lai Ram Dayal vs. CIT [1979] 2 Taxman 579 (P & H), wherein it was held that if the assessee, even in the face of the registered sale deed, is able to prove by cogent evidence and satisfy the Tribunal that no sale, in fact, took place, the Tribunal has 'to necessary conclude that there was no capital gain'. It is to be noted that in the instant case under consideration, the facts are distinguishable as those of the above referred case. Further, it has been held by two judicial authorities that possession of the land was with Smt. Krishna Devi and in fact, no temporary injunction was issued thereof.

(viii) Therefore, in view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the appellant has transferred its land to Smt. Krishna Devi during the year under consideration and thus, is liable for capital gains tax.

(ix) During the appellate proceedings, it was submitted by the appellant that the provisions of section 50C of the Act could be invoked only if the sale consideration of the capital asset, as stated in the sale deed, is less than the value adopted or assessed or assessable by any authority of state government for the purposes of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48 of the Act, be deemed to be the full value of consideration. It was further stated that in the instant case under consideration, the value of the land was assessed at Rs. 10 Lac by the Sub-Registrar- IV, Jaipur. In view of these facts, vide this office letter dated 09.12.2016, the matter was apprised to the DIG-II (Registration & Stamps), Jaipur for taking necessary action, if any, in respect of land sold by the appellant during the year under consideration. It may be mentioned that vide order dated 27.06.2017, the Collector (Stamps)- II, Jaipur- has determined the value of the land at Rs. 81,58,722/- after taking into consideration, the valuation made by the Collector (Stamps), Jaipur in respect of part of the properties sold by the three brothers of the appellant.

(x) During the appellate proceedings, vide order sheet entry dated

18.09.2017, a copy of the above order dated 27.06.2017 of the Collector (Stamps)-II, Jaipur was also provided to the appellant for obtaining its comments and the case was fixed for 26.09.2017, On 26.09.2017, it was submitted by the appellant that:

Further submission dated 26.09.2017

*“With respect to above we would like to state that as per order of Collector (Stamps), Jaipur-II, dated 27.06.2017, stamp duty value of Assessee’s property at Khasra No. 212/187/1/1 and 213/197/2 at Village Heerapura, Jaipur has been increased from Rs. 10,00,000/- to 81,58,772/- after a lapse of 11 years. This order has been passed ex-parte and not in knowledge of Assessee. Assessee had sold agriculture land in the subject matter & DLC value of the agriculture land was Rs. 978085/- i.e. @ 995000/- per bigha. Assessee has applied for the certified copy of the order and is filing appeal against this order with the revenue court and the same will be filed within one week.*

*Further, you are requested to please look into the other grounds of appeal and pass an order in the interest of justice and oblige.*

*And for this act of kindness my client as duty bound shall ever pray”*

The case was adjourned to 24.10.2017. On 24.10.2017, the AR of the appellant has attended the proceedings but no submissions were made. Since, the land under consideration is now valued by the Stamp Valuation Authority at Rs. 81,58,722/- and the sale consideration as stated in the sale deed was only Rs. 10 Lac, therefore, the provisions of section 50C of the Act are clearly applicable in the instant case under consideration and therefore, it is held that the AO was justified in taking the sum of Rs. 81,58,722/- as sale consideration while computing the long term capital gain on the sale of land under consideration.

(xi) During the appellate proceedings, the appellant has submitted a copy of its return of income for the year under consideration, which **was e-filed on 18.01.2016**. As per the enclosed computation of income, the appellant has computed the long term capital gain as under:-

(Amount in Rs.)

Sale Value	10,00,000
Less: Indexed cost of acquisition 73,725x519	3,82,633
	6,17,367
Less: Deduction	6,17,367

u/s 54F	
Long term capital gains	NIL

(xii) The assessment order was passed by the AO u/s 144/147 of the Act on 07.03.2014 and the return of income was filed by the appellant on 18.01.2016 i.e. the return of income was filed after the completion of the assessment and therefore, no cognizance could be given to it as it is a **non est** return.

(xiii) It may be mentioned that the appellate authority can examine a claim not made by the appellant in its return of income, however, in the instance case under consideration, it is to be noted that the appellant has filed its return of income post completion of assessment. However, it is trite law that only the real income is to be subjected to taxation. The appellant or its forefathers must have acquired the land for some consideration and the benefit for cost of acquisition should be allowed for computing the real income of the appellant. It may be mentioned that as per registered valuer report dated 11.01.2016, the FMV of the land as on 01.04.1981, sold by the appellant during the year under consideration, was stated at Rs. 75,000/- per bigha. However, no basis for arriving at such rate was provided in the valuation report and certainly, it was not based on any sale instance. Therefore, in view of the above discussion, in my considered opinion, it would be appropriate to take FMV of the land under consideration as on 01.04.1981 at Rs. 50,000/- per bigha. The AO is hereby directed to allow the same along with indexation benefit while computing the long term capital gains on sale of land under consideration.

(xiv) It is also noted that there are contradictions in the valuation report dated 11.01.2016 for determination of cost of construction of house property for the purpose of claiming deduction u/s 54F of the Act and the cost of construction was estimated at Rs. 10.04 lakh thereof. The appellant has also filed a copy of agreement dated 10.05.2006 with Shri Babu Khan for construction of house property in the land area of 183 square meter for a total consideration of Rs. 11 lakh. It is noted from the remand report of the AO that very nominal entries were reflecting in the bank account of the appellant. Further, as per the appellant itself, out of the sale consideration of Rs. 10 lakh, a sum of Rs. 5 lakh was received in cash only. The balance amount of Rs. 5 lakh was paid through cheque dated 01.05.2006, however, the same was not credited in the bank account of the appellant. Therefore, at the most, the appellant could have invested a sum of Rs. 5 lakh only in the construction of the house property. Further, the valuation report was prepared on 11.01.2016 i.e. almost after a gap of 10 years and since contradictions were there, as highlighted by the AO in his remand report, it has no evidentiary value. The appellant has not brought on record any documentary evidence which may establish that the house property under consideration was constructed by the appellant during the time limit of two years from the date of sale of land under

consideration as per the provision of I.T. Act. In view of these facts, the deduction u/s 54F of the Act could not be allowed to the appellant.”

2.2 During the course of hearing, the ld.AR of the assessee filed the written submission including the case laws and lastly prayed that the reassessment proceedings u/s 147/148 should be quashed.

2.3 On the other hand, the ld. DR supported the orders of the lower authorities.

2.4 We have heard the rival contentions and perused the materials available on record. In this case, we find that the assessee has sold the part of the agricultural land for Rs. 10.00 lacs which was the value adopted by the Sub-Registrar, Jaipur. In assessee's case, there was no reference regarding the valuation of the property by the Sub-Registrar, Jaipur to any of the higher authorities. The addition is based on the Collector (Stamps) valuation in the case of three others of the assessee. In assessee's case the sale consideration of Rs. 10 lacs was accepted by Sub-Registrar –IV, Jaipur. Thus there was no enhancement in assessee's case rather there is no reference to the Collector (Stamps) in assessee's case. It is a settled position of law that Section 50C is a deeming provision and such provisions cannot be invoked when there was no difference in sale consideration declared and value adopted by Registrar

or where no reference for valuating full value of consideration of property to Collector (Stamps). For the sake of convenience and brevity of the case, it will be pertinent to mention the provision of Section 50 of the I.T. Act, 1961 as under:-

**[Special provision for full value of consideration in certain cases.**

**50C.** (1) 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 by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of [section 48](#), be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

*Explanation.*—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of [section 2](#) of the Wealth-tax Act, 1957 (27 of 1957).

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]”

It is pertinent to mention that assessee had sold the land on prevailing DLC rate and Sub-Registrar-IV, Jaipur has adopted the same while

registering the documents. Therefore, the addition made invoking the provisions of Section 50C of the Act is not as per law. In this view of the matter, the addition made is deleted. Since, we have deleted the addition, therefore, the additional ground raised by the assessee (supra) becomes academic and does not require any adjudication. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 12 -07-2018.

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

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

जयपुर / Jaipur  
दिनांक / Dated:- 12 /07/ 2018  
\*Mishra

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

1. अपीलार्थी / The Appellant- Shri Lallu Ram Yadav, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2(3), Jaipur
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.1034 /JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar