

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.578/Ind/2017**

**Assessment Year 2010-11**

Late Smt. Kamla Bai, L/H Shri Akhilesh Joshi, 8, Rajab Ali Marg, Dewas (M.P)	Vs.	ITO-2 Dewas
(Appellant)		(Respondent )
PAN No.ALSPJ4932B		

**ITA No.579/Ind/2017**

**Assessment Year 2010-2011**

Shri Akhilesh Joshi, 8, Rajab Ali Marg, Dewas (M.P)	Vs.	ITO-2 Dewas
(Appellant)		(Respondent )
PAN No. ALSPJ4932B		

Revenue by	Shri P.K. Mitra, Sr.DR
Assessee by	Shri S.S. Deshpande, ,CA
Date of Hearing	15.10.2018
Date of Pronouncement	17.10.2018

**ORDER**

**PER MANISH BORAD, AM.**

These two appeals filed at the instance of two assessee's namely

Late Smt. Kamla Bai ITA No.578/Ind/2017 pertaining to A.Y.

2010-11 in the case of Shri Akhilesh Joshi ITA No.579/Ind/2017 pertaining to Assessment Year 2010-11 are directed against the order of Ld. Commissioner of Income Tax(Appeals) (in short 'CIT(A)'), Ujjain 29.05.2017 and 16.05.2017 which are arising out of the order u/s 143(3)/148 of the Income Tax Act 1961(In short the 'Act') dated 16.12.2016 and 17.12.2016 respectively framed by ITO-2, Dewas.

2. As the issues raised in all these appeals are mostly common they were heard together and have been disposed off by this common order for sake of convenience and brevity.

3. At the outset Ld. Counsel for the assessee commonly stated for both the appeals that, Ld.CIT(A) has not adjudicated the facts properly. Various documents were filed before the lower authorities including those pertaining to deduction claimed u/s 54B & 54F of the Act, which have not been considered. In light of these facts Ld.Counsel for the assessee requested for setting aside all the issues raised in both these appeals to the file of Ld. Assessing Officer (In short Ld.A.O) for *denovo* adjudication.

4. Ld. Departmental Representative though supported the orders of lower authorities but did not oppose to the request of Ld.Counsel for the assessee for setting aside all the issues raised in these two appeals to the file of Ld.A.O for *denovo* adjudication.

5. We have heard rival contentions and perused the records placed before us. In both these appeals relating with Smt. Kamla Bai and Shri Akhilesh Joshi multiple grounds have been raised apart from challenging the reopening of the assessment. Grounds have been raised against the addition for Long Term Capital Gain at Rs.59,48,470/- in the hands of both the assessee's made on account of invoking of the provisions of section 50C(3) of the Act, adopting the value assessed by the Stamp Valuation Authority which is higher than the sale consideration received by the assessee's. Grounds have also been raised for not allowing deduction u/s 54B and 54F of the Act. Revenue has not controverted the fact that Ld.CIT(A) has not dealt with the issue for giving deduction u/s 54B and 54F of the Act even when the assessee has filed necessary documents. Various submissions of the assessee have also not been considered which relates to the

ownership of the property which is contended to be that of Hindu Undivided Family (HUF) property being ancestral in nature and additions wrongly made for 1/3 of the long term capital gain even when the property was inherited by 6 persons. Issue has also been raised for the benefit u/s 54B and 54F of the Act which were not entertained even when the assessee was carrying on agriculture operation on the alleged land sold during the year. Assessee's challenge for reviewing the provision of Section 50C have not been considered even when the impugned land was situated below the high tension line situated at a hilly area with a "Nalla" going nearby. The assessee's request for referring the valuation to the Stamp Valuation Officer was also not considered by the Ld.A.O.

6. In view of the above and in the given facts and circumstances of the case we are of the considered view that all the issues raised in both these appeals needs to be set aside to the file of Ld.A.O for afresh adjudication. We accordingly order so. We also direct the assessee to remain compliant to the notice for hearing issued by the Ld.A.O and submit necessary documents and records in support of his contentions so that proper adjudication could be done by the

Kamla Bai & Akhilesh Joshi  
ITA No.578 to 579/Ind/2017

Ld.A.O. Needless to mention that proper opportunity of being heard should be provided to the assessee.

7. In the result both the appeals of the assessee are allowed for statistical purposes.

The order pronounced in the open Court on 17.10.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 17 October, 2018

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order  
Private Secretary/DDO, Indore