

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 655/CHD/2018

निर्धारण वर्ष / Assessment Year : 2008-09

Sh. Raj Kamal Gandhi, Duplex House No.1, Phase-3,Part-2 Sector-6 New Shimpa HP-171009	बनाम	The Pr. CIT, Shimla
स्थायी लेखा सं./PAN NO: ADIPG7856M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against the order of Pr. CIT , Shimla dated 03.2018</i>		

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आयकर अपील सं./ ITA No. 654/CHD/2018

निर्धारण वर्ष / Assessment Year : 2008-09

Sh. Raj Kamal Gandhi, Duplex House No.1, Phase-3,Part-2 Sector-6 New Shimla HP-171009	बनाम	The ITO, Ward-1, Shimla
स्थायी लेखा सं./PAN NO: ADIPG7856M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against the order of Pr. CIT, Palampur dated 22.02.2008</i>		

निर्धारिती की ओर से/Assessee by : Sh. T.N. Singla,CA

राजस्व की ओर से/ Revenue by : Sh. Gulshan Raj, CIT DR

सुनवाई की तारीख/Date of Hearing : 26.11. 2018

उदघोषणा की तारीख/Date of Pronouncement : 26.11. 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders of Pr. the Commissioner of Income Tax, Shimla

[hereinafter referred to as 'PCIT'] and Commissioner of Income Tax [hereinafter referred to as 'CIT(A)'] respectively.

2. First, we shall take up the appeal of the assessee in ITA No.655/Chd/2018.

ITA No.655/Chd/2018

3. In this appeal, the assessee has agitated the action of the Principal Commissioner of Income Tax, Shimla against the exercise of his revisionary powers u/s 263 of the Income-tax Act, 1961 (in short 'the Act') and thereby passing the impugned order.

4. At the outset, the Ld. Counsel for the assessee has submitted that the sole issue involved in the present case is relating to computation of 'long term capital gain' on the sale of industrial plot which was purchased by the assessee in the year 1976 and sold during the assessment year under consideration. The Ld. Counsel for the assessee has invited our attention to the original assessment order dated 24.12.2010 to show that the return was selected for scrutiny only for investigation on the above issue of computation of Long Term Capital Gain, wherein, during the assessment proceedings the assessee has submitted the entire record to show that the assessee had claimed cost of indexation in respect of land only and not in respect of the building which, according to assessee, was already demolished / damaged / having no value, at the time of the aforesaid sale of the plot. The issue was thoroughly examined by the Assessing officer and the capital gain returned by the assessee was accepted as such. Thereafter, notice u/s 148 of the Act was issued to the assessee for

initiation of re-assessment proceedings on the same issue. However, after verifying the record, the assessment u/s 147 read with section 143(3) of the Act was completed as such without any change or addition. Thereafter, doubting the assessment on the same issue, the Ld. PCIT has exercised his revision jurisdiction u/s 263 of the Act. The assessee had submitted the details before the PCIT, however, the Ld. PCIT was of the view that the Assessing officer in the assessment proceedings had not properly examined the issue as to the written down value (WDV) claimed by the assessee in respect of the building. He, therefore, directed the Assessing officer to make a fresh assessment on this issue.

5. Aggrieved by the above direction of the Ld. CIT(A), the assessee has come in appeal before us.

6. We have considered the rival contentions. Admittedly, the assessee has not claimed the cost of indexation on the building. The assessee has claimed the cost of indexation in respect of land only. As per the provisions of the Income-tax Act, no depreciation is allowable in respect of land, hence, there was no question of claiming the same in earlier years. Under the circumstances, in our view, when the issue has already been examined not only during the assessment proceedings carried out u/s 143(3) of the Act and subsequently re-assessment carried out u/s 147 read with section 143(3) of the Act, no useful purpose will be served in reexamining the same issue again, rather, it will only result into multiplicity of the litigation and unnecessary harassment to the assessee. We do not find any justification on the part of the Ld. PCIT for exercising

the revision jurisdiction u/s 263 of the Act in this case. The order passed u/s 263 of the Act in this is, therefore, quashed.

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

ITA No. 654/Chd/2018

7. In this appeal, the assessee has agitated the action of the CIT(A) in confirming the addition of Rs. 1.50 lacs made u/s 68 of the Income Tax Act on account of unexplained cash credit found in the bank account of the assessee.

8. We have heard the rival contentions. The assessee before the Assessing officer claimed that the said amount was out of sale proceeds of scrap. However, the assessee could not furnish any reliable evidence in this respect. The Assessing officer, therefore, treated the aforesaid deposits as unexplained income of the assessee and made the impugned addition u/s 68 of the Act.

9. Before the Ld. CIT(A), the assessee changed his stand and claimed that the aforesaid deposit was out of advance money received on account of sale of industrial plot. This was a totally a different plea taken by the assessee which seemed to be an after-thought version. Therefore, the Ld. CIT(A) rejected the aforesaid contention of the assessee.

10. Before us, the assessee could not produce any reliable evidence to show that the said deposit was out of the advance money received from the sale of the plot. We, therefore, do not find any infirmity in the order of the CIT(A) in making the impugned addition.

This appeal of the assessee is hereby dismissed.

In the result, appeal of the assessee in ITA No. 655/Chd/2018 is allowed, whereas, the appeal in ITA No. 654//Chd/2018 stands dismissed.

Order pronounced in the Open Court on 26.11.2018.

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 26.11.2018
“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar