

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.204/Ind/2017
Assessment Year:**

ITO-1 Ratlam (Revenue)	बनाम/ Vs.	Shri Kalimuddin Badnawarwala 34, Kadri Colony, Ratlam (M.P.) (Appellant)
P.A. No.AIGPB9948J		

**ITA No.205/Ind/2017
Assessment Year:**

ITO-1 Ratlam (Revenue)	बनाम/ Vs.	Smt. Bilkis Bai Badnawarwala, 94, Saifee Mohalla, Ratlam (M.P.) (Appellant)
P.A. No.AIGPB2128Q		

Appellant by	Shri K.G. Goyal, Sr. D.R.
Respondent by	Shri T.H. Khamosi & Shri Kaid Kangsawala, A.Rs
Date of Hearing:	10.12.2018
Date of Pronouncement:	08.01.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

These two appeals by the revenue against two different orders of the Ld. CIT(A), Ujjain pertaining to the assessment year 2008-09. Both the appeals were taken up together as the issues are common and are being disposed of by way of a consolidated order.

2. First we take up ITA No.205/Ind/2017. The revenue has raised following grounds of appeal:

On the facts and in the circumstances of the case Ld. CIT(A) erred in

- 1. Whether on the facts and in the circumstances of the case, Ld. CIT has erred in deleting the addition of Rs.25,75,513/- on account of Long Term Capital Gain.*
- 2. Whether on the facts and in the circumstances of the case, Ld. CIT has erred in deleting the addition of Rs.25,75,513/- on account of Long Term Capital Gain ignoring the provisions of Transfer of Property Act, wherein it is mandatory to register any change in right, title or entitlement to be registered before the registering authority i.e. Sub registrar and stipulated stamp duty, as per prevailing circle rate of Jantri rates shall have to be paid. Only after completion of such legal formalities, there can be valid transfer of immovable property.*
- 3. Whether on the facts and in the circumstances of the case, Ld. CIT has erred in deleting the addition of Rs.25,75,513/- on account of Long Term Capital Gain ignoring that transfer claim entities created there under as co-owner also have no legal sanctity. As such, 25% share in whole building*

transferred by Mrs. Bilkisbai Badnawarwala in favour of her son Mr. Kalimuddin Badnawarwala is void.

Note: The matter is covered under the exception as mentioned in para 8(c) of circular 21/2015.

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.

4. Briefly stated facts are that case of the assessee was reopened for assessment and the assessment u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 29.2.2016. While framing the assessment, the A.O. made addition of Rs.25,75,513/- and assessed the income at Rs.26,09,433/- against the declared income of Rs.33,950/-. The A.O. observed that the assessee had claimed capital loss of Rs.1,03,206/- on the land sold for Rs.1,50,00,000/-.
5. Aggrieved by the finding of the A.O., an appeal was filed by the assessee before Ld. CIT(A), who after considering the submissions deleted the additions.

6. Ld. D.R. supported the order of the A.O. and submitted that Ld. CIT(A) was justified in deleting the addition.

7. Per contra, Ld. Counsel for the assessee supported the order of Ld. CIT(A) and submitted that the A.O. was not justified in making the addition. He further submitted that the finding of the Ld. CIT(A) is contrary to the recorded and the material placed by the assessee.

8. We have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. The Ld. CIT(A) has given finding of facts by observing as under:

5.1 Ground No.1:- Through this ground of appeal the appellant has challenged the addition of Rs.25,75,513/- on account of long term capital gain. During the year under consideration the appellant sold the property situated at 37, Mitra Nivas Road (Tashkand Marg), Ratlam in which she was having 25% share. The appellant was having initially 50% share in the above stated property. As per the Hibba Nama under the Muslim Personal Law, she transferred 25% property to Mr. Kalimuddin who is son of the appellant. The 25% property has been sold by the appellant and the 25% has been sold by Mr. Kalimuddin. All the legal formalities like registration of the sale documents before the Sub-Registrar in respect of 25% has been done by the appellant and in

respect of 25% is done by Mr. Kalimuddin. The A.O. while calculating the capital gain has considered the sale price in respect of the appellant at 50% of the total receipt and the purchase price of the property also at 50% of the total purchase price and other expenditure like cost of construction at 25%. Since, the appellant owns 25% of the property at the time of transfer then it will be appropriate to consider sale price at Rs.37,50,000/- instead of Rs.75,00,000/- being 25% of the sale consideration. The A.O. should also have adopted plot purchase amount at Rs.8,28,250/- instead of Rs.16,56,500/-. Therefore, the capital gain of the appellant should be calculated as under:-

Sale consideration	1,50,00,000/-	Assessee's 1/4 th share		37,50,000/-
Less:				
Year of acquisition	Cost of acquisition	Index	Indexed cost of acquisition	
2001-02	8,28,250/-	551/426	10,71,281/-	
2001-02	3,10,750/-	551/426	4,01,933/-	
2002-03	5,53,092/-	551/447	6,81,776/-	
2003-04	12,74,976/-	551/463	15,17,304/-	
2004-05	1,57,600/-	551/480	1,80,912/-	38,53,206/-
LONG	TERM	CAPITAL	GAIN	-1,03,206/-

Therefore, the addition made by the A.O. amounting to Rs.25,75,513/- is

Deleted. Therefore, the appeal on this ground is **Allowed.**

9. The aforesaid finding on fact is not rebutted by the revenue by placing any adverse material on record. Therefore, we do not see any infirmity in to the finding of the Ld. CIT(A) and the same is hereby affirmed. Grounds raised by the revenue are rejected.

10. Now we take up revenue's appeal in ITA No.204/Ind/2017. The facts are identical as were in ITA No.205/Ind/2017. The respective representative have adopted the same arguments as were in ITA No.205/Ind/2015. We have sustained the finding of the Ld. CIT(A). As revenue has not placed any adverse material representing finding on fact by the Ld. CIT(A). Therefore, taking a consistent view in the present appeal as well, we do not see any infirmity in the finding of the Ld. CIT(A) and the grounds raised by the revenue are rejected.

11. In the result, appeals filed by the revenue are dismissed.

Order was pronounced in the open court on 08.01.2019.

Sd/-

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 08/01/2019

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore