

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 350/JP/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Kusum Lata Jain 91, Mauji Colony, Malviya Nagar, Jaipur.	बनाम Vs.	The ITO, Ward 6(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABXPJ 6534 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Akhilesh Kumar Jain (C.A.)
राजस्व की ओर से / Revenue by : Shri Anoop Singh (ACIT)

सुनवाई की तारीख / Date of Hearing : 14/02/2019
उदघोषणा की तारीख / Date of Pronouncement: 26/02/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 20.12.2017 of Id. CIT (A), Jaipur for A.Y. 2009-10. The assessee has raised the following grounds:-

- "1. The learned CIT(Appeals) has erred in law and on facts in not granting deduction of Rs. 10000/- from sale consideration of capital asset being expenses incurred in the course of transfer of capital asset in spite of the fact that relevant documentary evidence was produced.*
- 2. The learned CIT(Appeals) has further erred in law and on facts in not allowing benefit of indexation from the financial year 1995-*

96 in which payment of Rs. 198900/- was made towards cost of acquisition of capital asset sold.

3. The appellant craves leave to add, alter, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

2. Ground no. 1 is regarding not allowing deduction of Rs. 10,000/- on account of brokerage charges at the time of sale of the capital asset. The assessee is an individual and single lady sold immovable property at sale consideration of Rs. 2,55,500/- which was valued at Rs. 5,00,000/- by the Stamp Duty Authority. Accordingly, the AO adopted the full value consideration as per the provisions of Section 50C of the Act at Rs. 5,00,000/-. The AO after allowing deduction in the index cost of acquisition, construction, regularization charges, registration charges and society membership charges total amounting to Rs. 4,50,596/- computed the long term capital gain at Rs. 49,404/-. The assessee challenged the action of the AO before the Id. CIT(A) and claimed that the brokerage charges of Rs. 10,000/- was not allowed by the AO, while computing the long term capital gain. The Id. CIT(A) has rejected the claim of the assessee on the ground that no details have been furnished.

3. Before us, the Id. AR of the assessee has submitted that at the time of hearing before the Id. CIT(A) the assessee was asked to submit

the documents in respect of the brokerage charges and accordingly, the assessee vide letter dated 19.12.2017 submitted the receipt of brokerage charges. However, the Id. CIT(A) while passing the impugned order has not considered the said documentary evidence in support of payment of Rs. 10,000/- as brokerage charges. Thus, the Id. AR has submitted that the evidence filed by the assessee before the Id. CIT(A) may be considered in support of the claim.

4. On the other hand, the Id. DR has submitted that the assessee did not file any documentary evidence in support of the claim of brokerage charges either before the AO or before the Id. CIT(A). The alleged letter dated 19.12.2017 does not find place in the impugned order of the Id. CIT(A). He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The Id. CIT(A) while passing the impugned order dated 20.12.2017 has rejected this claim in para 3.3 reproduced as under:-

"3.3 I have perused the facts of the case, the assessment order and the submission of the appellant. 2(a): The first ground relates to non-allowing of transfer expense of Rs. 10,000/- being brokerage at 2% claimed to be paid. It is seen that no details for

this expenditure have been furnished, the same cannot be allowed. Ground of appeal is dismissed.

Thus, the Id. CIT(A) has dismissed the ground for want of necessary details for this expenditure of brokerage charges. The assessee filed a copy of letter dated 19.12.2017 along with receipt dated 13.02.2009 issued by the broker regarding the payment of Rs. 10,000/- as brokerage charges in respect of the sale transaction of the property sold by the assessee during the year under consideration. Without going into the controversy whether the said receipt was filed before the Id. CIT(A) on 19.12.2017 a day before the impugned order was passed we note that as per the said receipt the broker stated to have received brokerage charges of Rs. 10,000/- @ 2% of the sale consideration of Rs. 5,00,000/-. However, the actual sale consideration as per sale document as well as claim of the assessee is Rs. 2,55,500/- therefore, the alleged receipt of broker is contradictory to the admitted facts and therefore cannot be considered as an admissible evidence in support of the claim. Hence, we do not find any reason to interfere with the orders of the authorities below.

6. Ground no. 2 is regarding the denial of indexation cost from the Financial Year 1995-96. The assessee has claimed that it purchased the

property in question vide agreement/receipt dated 15.03.1996 though the said plot was transferred in the name of the assessee by the society in the year 1997. Therefore, the AO allowed the benefit of indexation from the financial 1997-98 and not from the financial year 1996-97. On appeal, the Id. CIT(A) has concurred with the view of the AO while granting the benefit of indexation from the year in which the property was transferred in the name of the assessee by the society.

7. Before us, the Id. AR has referred to the agreement/receipt dated 15.03.1996 and submitted that the assessee made the payment on the said date of agreement and therefore, the benefit of indexation shall be allowed from the date of payment and not from the date when the plot in question was transferred by the society in assessee's name. On the other hand, the Id. DR has relied upon the orders of the authorities below.

8. We have considered the rival submissions as well as relevant material on record. We find that the assessee purchase the property in question bearing plot No. 151, Ravindra Nagar, Jagatpur, Jaipur measuring 200 yard from one Shri Kailash Chandra Sharma vide agreement-cum-receipt dated 15.03.1996. Pursuant to the said purchase documents the Cooperative Society subsequently transferred

the said plot in the name of the assessee in the year 1997. Therefore, for the purpose of allowing the index cost of acquisition the date of purchase and actual payment of the purchase consideration has to be taken into consideration. The AO not disputed the payment made by the assessee for purchase of the plot of land in question on 15.03.1996, therefore, the benefit of indexation in respect of the cost of acquisition has to be allowed from the date of purchase agreement/receipt as well as payment made by the assessee and not from the date when subsequently, the plot was transferred by the cooperative society in the name of the assessee. It is pertinent to note that in the transfer in record of the cooperative society itself does not given the ownership title in the absence of the purchase documents from the another member. Hence, we allow the claim of the assessee an indexation cost of acquisition from 15.03.1996.

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

Order pronounced in the open court on 26/02/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/02/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

***Santosh.**

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

1. अपीलार्थी / The Appellant- Kusum Lata Jain, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(1), 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. 350/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar