

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' 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. 70/JP/2018
निर्धारण वर्ष/Assessment Year :2008-09

Sh. Ravi Purohit, 32, Vishvesariya Nagar Ext. Gopalpura By Pass Jaipur	बनाम Vs.	The ITO Ward 5(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGXPP3729Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से/ Revenue by : Shri Varindar Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 30/01/2019
उदघोषणा की तारीख/ Date of Pronouncement: 02/04/2019

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 18.12.2017 wherein the assessee has taken the following grounds of appeal:-

"1.1 The impugned order u/s 147/143(3) dated 16.03.2016 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2.1 Rs. 14,02,900/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 14,02,900/- on account of long term capital gain on sale of residential house. Thus both the lower authority wrongly taken the long term capital gain at Rs. 16,12,749/- as against Rs. 2,09,849/-. Hence the addition so made by

the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence same may kindly be deleted in full.

2.2: The Id. AO as well as the Id. CIT(A) have grossly erred in law as well as on the facts of the case in taking the value of the property of stamp authority at Rs. 31,52,900/- (1/2 share) which was commercial value as against actual sale consideration at Rs. 17,50,000/- (1/2 share) received by the assessee which was residential as property as residential. Hence the addition so made may kindly be deleted in full.

2.3 The Id. CIT(A) has grossly erred in law as well as on the facts of the case in making ignoring all the material or evidences which were available on the record of Revenue as well as before her. Which is being totally contrary to the provisions of law and facts on the record and against the principal of natural justice, hence all the addition may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A B & C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full."

2. Briefly stated, the facts of the case are that the assessee has sold an immovable property bearing No. 5, Ram Bari, Jalori Gate, Jodhpur for a consideration of Rs. 35,00,000/- along with his father Sh. Raman Lal. The said property was registered by the Sub- Registrar at DLC rate of 35,00,000/- on 13.07.2007 which was subsequently enhanced to Rs. 63,05,800/-. In the return of income filed pursuant to issuance of notice u/s 148, the assessee has disclosed the long term capital gain of Rs. 2,09,849/- on account of sale of the property. The assessee has considered the sale consideration at Rs. 17,50,000/- as against Rs. 31,52,900/- as per the enhanced DLC value by the

Sub-Registrar. After giving a show cause to the assessee, the sale consideration was taken by the AO at Rs. 31,52,900/- invoking provisions of section 50C(1) of the Act and after giving benefit of cost of acquisition and cost of improvement, long term capital gains was worked out at Rs. 16,12,749/- as against Rs. 2,09,849/- worked out by the assessee in his return of income.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has sustained the said addition made by the Assessing Officer. Against the said finding of the Id. CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the Id AR submitted that the reasons recorded by the AO were wrong, incorrect and without material as the assessee has not sold the property for Rs. 63,05,800 as alleged in the reasons. The assessee has sold the property for Rs. 35,00,000/- and his share comes to Rs. 17,50,000/-. It was further submitted that the Assessing Officer has not stated under what provisions or under what head, the income has escaped assessment and it was submitted that the AO has issued notice u/s 148 on the basis of AIR information and said information is borrowed and the Assessing Officer has not recorded satisfaction and there was no material or evidence in possession of the Assessing Officer at the time of issuance of notice u/s 148 except wrong information and it was submitted that the AO has not conducted any enquiry or collected any material that the assessee has received own money or more consideration than what has been mentioned in the sale deed. It was further submitted that at the time of issuance of the notice, there was no sale deed in the hands of the Assessing Officer and there was only on AIR information and the same cannot be made a basis for reason to believe that the income of the assessee has escaped assessment. In support, reliance was placed on the various Court decisions as well as decisions of the Co-ordinate Benches in case of ITO vs. Shiv Shakti Build Home (P) Ltd. (2011) 141 TTJ

0123(Jodh), Arun Kumar Choudhary vs. ITO in ITA No. 268/JP/2015 dated 08.09.2016 and Sh. Jagdish Chandra Boriwal in ITA No. 216/Jd/2017 dated 01.08.2017. It was accordingly submitted that the very assumption of jurisdiction u/s 147 cannot be sustained and therefore, resultant assessment proceedings be quashed.

5. On merits, it was submitted by the Id AR that the lower authorities have not appreciated the facts in right perspective. It was submitted that the Sh. Raman Lal, the father of the assessee along with the assessee had jointly purchased the said property on 10.10.2002 for a consideration of Rs. 10,00,000/-. Thereafter, they have carried out the renovation and construction on the said property which is a residential house consisting of basement, ground floor, first floor and second floor. Thereafter, they have jointly sold residential house on 3.07.2017 for consideration of Rs. 35,00,000/- as per the sale deed and thus the share of the assessee comes to Rs. 17,50,000/- in respect of which the assessee has declared capital gain at Rs. 2,09,849/- in his return of income in response to notice u/s 148. It was accordingly submitted that there is no further long term capital gain which can arise in the hands of the assessee over and above what has been declared in the return of income. It was further submitted that the AO has not taken any action in the hands of the father of the assessee, shri Raman Lal who is the co-owner of the property and given that, no action can be taken in the hands of the assessee. In support, reliance was placed on the Co-ordinate Bench in case of Smt. Surendra Kaur vs. AO in ITA No. 547/JP/2017 dated 29.09.2017. It was further submitted that the AO has not brought on record that the assessee has received any consideration in excess of what has been stated in the sale deed. It was further submitted that the property under consideration was a residential property. The assessee along with his father has sold the property as a residential property and there cannot be any dispute regarding the same.

It was submitted that the sub-registrar has revalued the property as commercial and enhanced the DLC value after registration of sale deed on its own without knowledge of the assessee. It was submitted that the purchase of residential house has not been denied, only due to the location of the property being near a commercial area, the nature of property cannot be changed. It was submitted that the stamp authority or AO has nowhere stated that the property was commercial. The stamp duty has been paid by the purchaser and if the purchaser has paid excess stamp duty and not disputed by him, the same does not mean that the character of the property has changed or assessee has accepted the same. It was accordingly submitted that the assessee has disputed the enhanced DLC value so adopted by the Sub-Registrar before the AO, however, the assessee's contentions were not accepted by the AO and the latter automatically applied the enhanced DLC Value. It was further submitted that the assessee has submitted a registered valuation report dated 18.06.2005 in support of the cost of acquisition and the cost of improvement wherein the property has been shown as a residential property. Both the lower authorities have not been disputed the said valuation report or has brought any adverse report or material evidence against the same. It was submitted that the AO considered the said valuation report for the purpose of determination of cost of acquisition and cost of improvement. It was accordingly submitted that the AO made the addition on account of long term capital gain on the sale of the residential property on the basis of stamp duty taken by the stamp valuation authority merely on account of location of the property near a commercial area. Except this no other basis has been made out by the AO and he nowhere stated that where in the Act it has been provided that the LTCG has been imposed on the basis of commercial areas of the land in question. It was accordingly submitted that it is a settled legal position that if the property has been recorded in the Revenue record as residential property, then it cannot be changed to commercial property and no excess capital gains can be charged.

It was accordingly submitted that the entire addition made by the AO should be deleted.

6. Per contra, the Id. DR is heard who has submitted that the AO, on the basis of tangible information in his possession that the assessee has sold a house property and given the fact that no return of income has been paid by the assessee, issued a notice u/s 148 after seeking the requisite approval. It was accordingly submitted that it is a clear case of income escaping assessment on sale of the property and therefore, there is no basis in the contention so advanced by the Id. AR challenging the legality of the proceedings initiated u/s 147 of the Act.

7. On merits, it was submitted by the Id CIT DR that valuation has been adopted by the Sub-Registrar at Rs. 63,05,800/- and in that case, the AO has no option but to invoke the deeming provisions of section 50C of the Act and to adopt the said valuation for the purposes of computation of long term capital gain. It was further submitted that the during the course of assessment proceedings, the assessee was asked to explain as to why this enhanced DLV value should not be taken as per provisions of section 50C of the Act and in response, the assessee has submitted that the nature of the property has been changed from residential to commercial and the Sub-Registrar is not the competent authority for the same and clarification has been sought from the appropriate authority, however, no such clarification was furnished by the assessee. In light of the same, it was submitted that the AO has rightly completed the assessment by applying the provisions of section 50C of the Act.

8. We have heard the rival contentions and perused the material available on record. Firstly, on the legality of the proceedings initiated by way of issuance of notice u/s 148 of the Act, it is noted that the assessee has not filed

his return of income disclosing the subject transaction and declaring capital gains thereon and the return of income has been filed pursuant to issuance of notice u/s 148 of the Act. It is thus a case of assessment and not a case of reassessment u/s 147 of the Act. Secondly, the transaction of sale of property which the assessee is a joint owner along his father is not disputed by the assessee and which is the subject matter of reasons so recorded by the AO before issuance of notice u/s 148 of the Act. The AO thus has a tangible information in his possession that the assessee has sold a property and the capital gains arising therefrom has not been declared given that no return of income has been filed earlier. Once the transaction of sale of property during the financial year is not disputed, the exact quantum of capital gains is a matter of computation and examination during the assessment proceedings. It is thus a clear case of income escaping assessment and we do not see any infirmity in the assumption of jurisdiction by the AO by way of issuance of notice u/s 148 wherein the capital gains have been brought to tax during the impugned assessment year.

9. On merits, the limited issue under consideration is adoption of enhanced DLC Value by the AO by invoking the provisions of section 50C of the Act. The Id CIT DR has contended that valuation has been adopted by the Sub-Registrar at Rs. 63,05,800/- and in that case, the AO has no option but to invoke the deeming provisions of section 50C of the Act and to adopt the said valuation for the purposes of computation of long term capital gain. The contention of the Id AR is that the enhanced DLC Value has been determined by the Sub-Registrar and accepted by the purchaser and the assessee had no knowledge about the same. Further, the assessee has contested the adoption of enhanced DLC Value before the Assessing officer as the same has been done by considering the property as commercial whereas the fact of the matter is that it is a residential property which has been sold by the assessee as

evidenced by the sale deed and merely on account of its location close to a commercial area, the nature of the property cannot be changed. In our view, once the assessee has contested the adoption of enhanced DLC value before the AO during the assessment proceedings, the position in law is very clear that in such cases, the AO should refer the matter of valuation of the property to the DVO and the latter shall consider the contentions/objections of the assessee and determine the appropriate valuation. In the present case, however, the same has not been done by the AO and even during the appellate proceedings, such reference to DVO has not been made. In light of the same, the matter is set-aside to the file of the AO who shall call for the report of the DVO and after considering the same, determine the sale consideration which can be brought to tax in terms of section 50C in the hands of the assessee.

In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the Open Court on 02/04/2019.

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

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/04/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Ravi Purohit, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 5(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. 70/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

