

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

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

आयकर अपील सं./ITA No. 787/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15.

The Deputy Commissioner of Income-tax, Central Circle, Kota.	बनाम Vs.	Shri Hari Om Bhatia, 49-A, New Colony, Gumanpura, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. ANAPB 6218 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri B.K. Gupta (CIT-DR)
निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 09.04.2019.
घोषणा की तारीख/ Date of Pronouncement : 25/04/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the revenue is directed against the order dated 26.03.2018 of Id. CIT (A) for the assessment year 2014-15. The revenue has raised the following grounds :-

- 1) Whether on the facts and in the circumstances of the case the CIT (A) was justified in deleting the addition of Rs. 66,40,200/- made by the AO u/s 2(24)(iv) of the IT Act.
- 2) Whether on the facts and circumstances of the case and law, the CIT (A) was justified in observing that the price determined by the Sub Registrar represents fair market value of the property despite the fact that undisputable evidences indicating sale of property by M/s. Bhatia Colonizers P. Ltd at a value substantially higher from the registered value were found during the course of search.

The applicant crave, leave or reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

Ground nos. 1 & 2 raised by the revenue are regarding addition made under section 2(24)(iv) of the IT Act.

2. We have heard the Id. D/R as well as the Id. A/R and considered the relevant material on record. The AO has made the addition by applying the proportion of On Money/Unaccounted consideration based on the seized material. We have considered an identical issue in the case of Smt. Reema Harish Bhatia for the assessment year 2014-15 in the appeal of the revenue in ITA No. 789/JP/2018 in para 24 of even date order as under :-

"24. We have considered the rival submissions as well as the relevant material on record. We note that the AO has taken the unrecorded consideration found in the seized material in respect of plot no. D-12, E-13 and E-16 and then worked out the proportion/ratio of recorded consideration in the books of M/s. Bhatia Colonizers Pvt. Ltd and the value recorded in the seized document. Therefore, the AO arrived at unrecorded consideration in respect of the plot nos. D-12, E-13 and E-16 at 94.86% of the recorded consideration. This ratio was applied by the AO in the case of the assessee for considering the FMV of the property. However, applying the ratio without considering the consideration in terms of the rates is highly arbitrary and without application of mind. The assessee has purchased the Villa measuring 2400 sq. ft and constructed area 4875 sq. ft for a consideration of Rs. 90 lacs. The cost of construction was estimated by the Id. CIT (A) at Rs. 900/- per sq. ft. and after reducing the cost of construction from the total purchase consideration, the sale price of plot of land comes to Rs. 46,12,500/-. Thus the average rate considered per sq. ft comes to Rs. 1922/- at which the assessee has purchased the plot of

land in question. The AO has applied the rate as per the seized material in respect of three plots of land, the details of which are as under :-

Plot No.	Type	Size in Sq. Ft.	Value as per seized documents	Value recorded in books	Average sale price as per seized document.
D-12	Plot	1000	15,50,000/-	6,50,000/-	1550/-
D-13	Plot	1800	30,15,000/-	16,20,000/-	1675/-
D-16	Plot	1800	30,15,000/-	16,20,000/-	1675/-
	Total	4600	75,80,000/-	38,90,000/-	1648/-

Therefore, as per the seized documents, the total sale consideration in terms of per sq. ft. rate for these three plots is ranging from Rs. 1,550/- to Rs. 1,675/- and the average of these three plots comes to Rs. 1,648/- per sq. ft. If the said rate is compared with the rate of the assessee's plot at Rs. 1,922/- then the declared purchase consideration of the assessee is even more than the consideration found recorded in the seized material. The AO without considering the fact of the rate declared in the case of the assessee has applied the ratio of recorded and unrecorded value in case of sale of other plots wherein the recorded consideration was very less, if it is taken in terms of per sq. ft. It is clear that for the plot D-12, the rate per sq. ft. as recorded is Rs. 650/- and as per seized document it is Rs. 1550/- whereas in the case of assessee the recorded consideration itself is Rs. 1922/- per sq. ft. Hence the ratio applied by the AO without considering the relevant facts is not justified. The Id. CIT (Appeals) has considered this issue in para 4.3 to 4.3.5 as under :-

" 4.3. I have considered the facts of the case, gone through the assessment order and the submission of the appellant.

- 4.3.1. The only dispute in this issue is whether assessee has obtained any benefit by selling the plot to the assessee for Rs. 90,00,000/-. AO made the addition by applying the provisions of section 2(24)(iv) by holding that assessee has purchased the villa from the company at lower price than the market price.
- 4.3.2. I find that section 2(24)(iv) is a deeming fiction and the deeming fiction needs to be construed strictly. For making addition under this section the assessee must have obtained some benefit. The various cases relied by the AR also supports this view.
- 4.3.3. However no such benefit is actually obtained. The AO in the assessment order has accepted that there is no evidence of actual record of 'On Money' and therefore no benefit is actually obtained.
- 4.3.4. I further found that the sale of the villa to the assessee is at a price more than the price determined by the sub registrar. This represents fair market value as recognized u/s 50C and 43CA. Further the assessee has also filed comparative case of villa sold to other parties at a price lower than to the assessee which proves that no extra benefit is given to the assessee.
- 4.3.5. The AO for holding that assessee has obtained extra benefit compared the three cases wherein on money evidence was found in search. The rate per sq. ft. of these three plots including on money works out to Rs. 1648/- per sq. ft. whereas the villas sold to the assessee is at 1922/- per sq. ft. Thus infect the villas is sold to the assessee at a higher price than the others and therefore it can't be said that there is any benefit given to the assessee."

In view of the above facts as discussed above, we do not find any error or illegality in the order of Id. CIT (A) in deleting the addition made by the AO under section 2(24)(iv) of the IT Act."

Therefore, facts as well as the computation of On Money /Unaccounted consideration taken by the AO are identical whereas we find that the actual rate per sq. yard/sq. ft. paid by the assessee is more than the rate found recorded in the seized material as well as circular rate of the property. Accordingly, we do not find any error or illegality in the order of the Id. CIT (A) qua this issue.

3. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 25/04/2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 25/04/2019.

Das/

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

1. The Appellant- The DCIT, Central Circle, Kota.
2. The Respondent – Shri Hari Om Bhatia, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 787/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar