

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

I.T.A. No. 335/Asr/2018
Assessment Year: 2008-09

Gulbahar Singh s/o Gurdial Singh [through L/H Gursharanjit Kaur, w/o Gulbahar Singh], Proprietor, Parmindera Medicine Centre, Miani Road, Teh. Dasuya, Distt. Hoshiarpur (144205) [PAN: ANAPK 5537B] (Appellant)	vs.	Income Tax Officer, Dasuya (Respondent)
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Appellant by : Sh. Vinod Kumar	(C.A.)
Respondent by: Sh. Charan Dass	(D.R.)

Date of Hearing: 20.02.2019

Date of Pronouncement: 30.04.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Jalandhar ('CIT(A)' for short) dated 29.3.2018, dismissing the assessee's appeal contesting his assessment u/s. 143(3) r/w s .254 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 08.11.2017 for the Assessment Year (AY) 2008-09.

2. The issue in the instant case is the correct valuation (as on 01.4.1981) of a plot of land, measuring 29.66 Marlas, the capital asset transferred by the assessee during the relevant year. Being held since prior to that date, its' fair market value

(fmv) as on that date (01.4.1981) would stand to be deducted in computing the long-term capital gain (LTCG) arising on its transfer. While the assessee has applied a rate of Rs.9000 per Marla, supporting the same with a registered valuer's report dated 20.1.2013, opining a rate of Rs.8500 per marla, the Revenue has applied a rate of Rs. 2000 per marla. The basis of the Revenue's rate are the sale instances in the vicinity of the assessee's plot at the relevant time. The valuation report being relied upon by the assessee is, on the other hand, undocumented in-as-much as it is admittedly based on hear-say, i.e., as stated, interview/s by the Valuer with the resident/s of the area. The assessee had in fact itself agreed to a rate of Rs.2,000/- per marla in the first round. The matter had in fact been set aside by the Tribunal to allow the assessee an opportunity to demonstrate the peculiarity of his land in-as-much as it was his plot that stood acquired and compensated for by the Government (in ITA No. 23/Asr/2015, dated 04/7/2016), which he has been unable to in the second round. This sums up the cases of both the sides.

3. I have heard the parties, and perused the material on record.

The question arising in the instant case is the correct valuation of the capital asset transferred, a piece of land, as on 01/4/1981. The same is a pure question of fact, to be decided on the basis of the material on record. It is the relevancy of these materials, so that no irrelevant material or consideration weighs or influences the decision making process, that therefore is important, and is to be seen, as emphasized time and again by the Apex Court, toward which reference may be made to some of its' decisions, viz. *CIT v. Radha Kishan Nandlal* [1975] 99 ITR 143 (SC); *CIT v. Daulat Ram Rawatmull* [1973] 87 ITR 349 (SC); *Omar Salay Mohamed Sait v. CIT* [1959] 37 ITR 151 (SC); *Dhiraj Lal Girdharilal v. CIT* [1954] 26 ITR 736 (SC)). The same, accordingly, provides the frame-work under

which the question arising for determination – a matter of fact, is to be addressed and decided.

The assessee's case that the fair market value (fmv) is generally more than the stamp valuation, i.e., under the Stamp Act, so that the latter could not be assumed to be the fmv, is well taken. This is as while the circle rate is normally taken conservatively, the fmv is of a particular asset, with all its' peculiarities, which contribute to determining its' fmv. This in fact is the basis of the tribunals' order in the first instance (copy on record), restoring the matter back to the file of the Assessing Officer (AO), so as to allow the assessee an opportunity to show as to why, in the facts and circumstances of the case, the stated rate (Rs. 9,000 per marla), being much higher than the circle rate, be adopted. Two, the circle rates are declared after intervals of time, while the market rate keeps changing constantly in response to the market conditions, seeking equilibrium of the supply and demand forces. It is in fact in cognizance of the changed market rate – as arising over a period of time, that the circle rate of an area is changed. However, to suggest that the two, i.e., the stamp valuation and the fmv, are not positively correlated, is completely incorrect; the former being premised on the latter (fmv). Further, for a fact to be taken judicial notice of, it has to be, in the very least, documented and, of course, reliably sourced. In the present case, the valuation report is based on the supposed interviews (by the Valuer) with the residents of the area, none of which is on record. *Two*, it is difficult to remember with accuracy the rate/s over three decades ago. *What sanctity, then, could be placed on these supposed interviews, with the valuer also having since expired (on 31/12/2016)*. In fact, it is the actual seller (of the property) who could, if so, state the correct rate, and the reliability of the information gathered from others, even assuming so, is suspect. This is as it being not declared (in the sale deed), it is only the parties to the transaction who know for sure the price negotiated. Thirdly, the fmv stands admittedly declared (in

the valuation report) on the basis of the fmv obtaining in the area, while it is that of a particular piece of land – the capital asset under reference, that is relevant. Needless to add, no peculiarity of his land has been, even in the second round of the proceedings, stated by the assessee, even as this is precisely the reason for the restoration by the tribunal in the first instance.

The claim of the subject land being commercial in nature, in-as-much as it is adjacent to a petrol pump, can hardly be given any credence as, as admitted by the ld. counsel for the assessee, Sh. Kumar, the petrol pump came up much after 01.04.981, the fmv on which date is to be deducted (after indexation). While this order discusses the arguments as advanced during hearing, it may be clarified that the orders by the Revenue authorities are based on definite findings, not rebutted, drawn on the basis of cogent reasons.

Continuing further, of all the different sale instances being relied upon, only one, i.e., of 2 Marlas, 3 Sarsai of land, on GT Road (Opp. Railway Station, Dasuya), is comparable in terms of location – being on the GT Road, and time, being during 1981. The same, at Rs.3220 per marla, thus, gives a fair idea of the fmv of the assessee's land at the relevant time. The two plots of land, though 6 kilometers apart, there is yet nothing to suggest of the market value either increasing or decreasing over the said distance, though, without doubt, *the location of the comparable land is more central*. In fact, instances of the property further down, i.e., as one travels from the comparable land, itself at a distance of 6 Km from the assessee's land, i.e., at a distance of 6 to 6 ½ km from the subject land, are also comparable, even as these are not on the GT Road, but about half a kilometer off the main road. The assessee's plot is, however, much larger than the comparable plot. A discount of about 20%, i.e., with reference to smaller plots, is normal and reasonable. Adopting a discount of 20% gives a rate of Rs. 2576 per marla. A fmv of Rs.2500 per marla should obtain, and is thus in order.

Accordingly, the fmv of the assessee's plot (as on 01.4.1981), i.e., the capital asset under reference, is, under the given facts and circumstances and the material on the record, directed to be taken at Rs. 2500 per marla.

I decide accordingly.

4. The second issue arising in this appeal is the maintainability of the assessee's claim of cost of improvement, made at Rs.1 lac, in the computation of said capital gain. The same has been denied by the Revenue for want of substantiation. The Id. CIT(A) has confirmed the disallowance, holding as under:

'7.2 I have considered the observation of the assessing officer while confirming the impugned addition. I have also considered the written submissions filed by the appellant in support of his grounds of appeal. On careful consideration of rival contention, it has been noticed that the appellant neither during the original assessment proceedings nor during the re-assessment proceedings produced any documentary evidence in connection with the expenses over the cost of improvement incurred by him during the F.Y. 2002-03 & F.Y. 2003-04 amounting to Rs. 1,14,500/- & Rs.97,366/- respectively. Further, in the valuation report dated 20.01.2013 all the columns under the head "Cost of construction" is marked as "N.A." and therefore the expenses incurred by the appellant on the cost of improvement/construction cannot be ascertained in the absence of any documentary evidence. Despite the above facts, the Ld.CIT(A)-I, Jalandhar vide order dated 15.12.2014 has already granted relief on this issue to the extent of Rs. 1,00,000/- by holding that as the appellant was running a petrol pump on the land which was acquired by the NHAI during the F.Y. 2002-03, some improvement could not be denied. The assessing officer has already given appeal effect to the appellate order giving relief of Rs. 1,00,000-. Therefore, in the light of the above facts the appellant is not eligible for any further relief as he failed to substantiate his claim of having incurred expenses on improvement of the land in question by way of documentary evidences even during the appeal proceedings. As a result full improvement cost as claimed by the appellant cannot be accepted owing to the reasons stated above. As such, the addition made on this ground is upheld. Accordingly, the above ground of appeal is dismissed.'

The Id. CIT(A) has issued definite findings in the matter, as indeed he had *qua* the first issue. No improvement in his case stands made by the assessee before me; in fact, no arguments were raised during hearing on this aspect. The assessee's claim,

accordingly, continues to be no more than a bald claim. The disallowance is accordingly confirmed. I decide accordingly.

5. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on April 30, 2019

Sd/-

(Sanjay Arora)

Accountant Member

Date: 30.04.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Gulbahar Singh S/o Gurdial Singh Through L/H Gursharanjit Kaur, W/o Gulbahar Singh, Proprietor of Parmindera Medicine Centre, Miani Road, Teh. Dasuya, Distt. Hoshiarpur (144205)
- (2) The Respondent: Income Tax Officer, Dasuya
- (3) The CIT(Appeals)-1, Jalandhar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order