

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1031/JP/2016
निर्धारण वर्ष / Assessment Year :2012-13

Smt. Darshana Jagdish Malli, Jalan Marg, Dhulia Road, Sujangarh, Churu, Rajasthan.	बनाम Vs.	A.C.I.T., Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANRPM 8179 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1048/JP/2016
निर्धारण वर्ष / Assessment Year :2012-13

A.C.I.T., Jhunjhunu.	बनाम Vs.	Smt. Darshana Jagdish Malli, Jalan Marg, Dhulia Road, Sujangarh, Distt.-Churu, Rajasthan.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANRPM 8179 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Satish Kumar Gupta (CA)
राजस्व की ओर से / Revenue by : Shri Rajendra Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/02/2019
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeal and cross appeal filed by the assessee and revenue against the order of Id.CIT(A)-III, Jaipur dated 26/09/2016 for the A.Y. 2012-13 in the matter order passed U/s 143(3) of the Income

Tax Act, 1961 (in short the Act). Following grounds have been taken by the assessee:

- “1. *Under the facts and circumstances of the case, the Id. CIT(A) has erred by not considering the payment of brokerage amounting Rs. 21,917/- in spite of submitting name and address of the recipient to the assessing authority.*
2. *Under the facts and circumstances of the case, the Id. CIT(A) has erred by not considering the tube well expenses amounting Rs. 65,000/- and indexed value Rs. 1,31,170/- in spite of submitting name/address/bill and confirmation of the recipient to the assessing authority.*
3. *The assessee craves the right to add, reduce, amend and withdraw of all or any grounds of appeal.”*

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee has offered long term capital gains with respect to the agricultural land sold. The assessee has claimed the brokerage of Rs. 21,917/- and also well expenses of Rs. 65,000/- in which indexed cost of Rs. 1,31,170/- was claimed. The assessee also claimed deduction U/s 54EC of the Act. However, the A.O. declined all the claims of assessee. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. with regard to expenses on brokerage and well, however, he allowed colaim of deduction U/s 54EC of the Act. Against the order of the Id. CIT(A), both assessee and the revenue are in further appeals before the ITAT.

3. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the year under consideration the assessee has shown income from long term capital gain amounting to Rs. 35,63,252/- and income from other sources amounting to Rs. 7,95,102/- aggregating to Rs. 43,58,354/-. During the course of assessment proceedings, the assessee furnished relevant details and evidences in support of income declared in the return of income. On perusal of details filed by the assessee, it is noticed that the assessee has claimed brokerage on purchase of agriculture land amounting to Rs. 21,917/-. Further the assessee has claimed tube well expenses of Rs. 1,31,170/- in computation of income for the year under consideration. With regard to claim of brokerage expenses, we found that the brokerage was paid to Shri Om Prakash of Surat amounting to Rs. 9,800/-. It was explained that since the assessee was living in Dubai, to have a better deal, the assessee has paid brokerage to Shri Om Prakash. Accordingly, out of the assessee's claim of brokerage of Rs. 21,917/-, we direct to allow brokerage of Rs. 9,800/- paid to Shri Om Prakash. Balance amount of Rs. 12,117/- is confirmed.

4. With regard to expenditure on well incurred by the assessee in the year 1999-2000, we found that the assessee had submitted confirmation letter of M/s Kaladera Bore Well, who fitted the bore well. The

confirmation letter so filed mentioned name, address everything with regard to digging of bore well. We had verified the bill No. 81 dated 25/04/1999 issued by Kaladera Borewell, 1881, Kaladera, Tehsil-Chomu, Jaipur (Raj.) as placed on record. Accordingly, there is no justification for disallowing the claim of borewell expenses of Rs. 65,000/-, indexed cost amounting to Rs. 1,31,170/- by the A.O. Accordingly, the A.O. is directed to allow borewell expenses incurred by the assessee while computing the long term capital gains. We direct accordingly.

5. In the result, appeal of the assessee is allowed in part.

6. With respect to the revenue's appeal, we found that in course of assessment, the A.O. has declined the assessee's claim of deduction U/s 54EC of the Act amounting to Rs. 50.00 lacs which was deleted by the Id. CIT(A) after having a detailed finding at para 6.3 of its appellate order, against which the revenue is in further appeal before the ITAT.

7. We found that the tax effect in the revenue's appeal is less than Rs. 20 lacs, therefore, in view of the CBDT Circular No. 3/2018 dated 11th July, 2018 (F No. 279/Misc. 142/2007-ITJ(Pt) instructing the authorities below that departmental appeal should not be filed before ITAT where the demand/tax effect does not exceed Rs. 20 lacs. Since the tax demand in dispute in this departmental appeal

is below the limit set out by CBDT for the appeal, the appeal of the revenue is not maintainable in view of CBDT Circular No. 3 of 2018 dated 11.07.2018. Accordingly, the appeal of the Department is dismissed as not pressed/withdrawn.

8. In the result, appeal of the assessee is allowed in part and the appeal of the revenue is dismissed.

Order pronounced in the open court on 30th April, 2019.

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

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30th April, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Darshana Jagdish Malli, Churu.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Jhunjhunu.
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. 1031 & 1048/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar