

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 238/JP/2019
निर्धारण वर्ष /Assessment Year :2015-16

Ajay Kumar Data, 20, 21 and 22, Old Industrial Area, Alwar, Rajasthan- 301001.	बनाम Vs.	D.C.I.T., Central Circle- Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABKPD 6905 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

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

सुनवाई की तारीख / Date of Hearing : 10/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of Id.CIT(A)-IV, Jaipur dated 29/01/2019 for the A.Y. 2015-16 in the matter of order passed U/s 143(3) read with Section 153A of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved for addition of Rs.34,271/- U/s 56(2)(vii)(b)(ii) of the Act. It was argued by the Id AR

that in the present case, agricultural land purchased by the assessee is not a capital asset as defined in section 2(14) of the Act. As per this section, capital asset does not include agricultural land in India except that agricultural land which falls within a particular distance from the local limits of the municipality. As per sub-clause (b)(III) of clause (iii) to section 2(14), agricultural land situated within 8 kms of the local limits of municipality and having a population of more than 10 lacs are considered as capital asset. In the present case, the land purchased by the assessee in village Bhandoli is situated more than 32 kms of the municipal limit of Alwar and has a population of 1357. Therefore, the land purchased by the assessee is not a capital asset and thus, not an immovable property as envisaged u/s 56(2)(vii)(b) of the Act. Hence, the difference between actual consideration and the value adopted for stamp duty purposes cannot be brought to tax in the hands of the purchaser under this section. It was further contended that the difference in actual consideration paid and DLC value was less than Rs. 50,000/- therefore, provisions of Section 56(2)(vii)(b)(ii) will not be applicable.

3. On the other hand, the Id DR relied on the orders of the authorities below.

4. Rival contentions have been heard and record perused. Facts in brief are that the assessee purchased an agricultural land in village Bandholi, Tehsil Ranigarh, District Alwar for Rs.94,000/-. The stamp authorities for stamp duty purpose took its value at Rs.1,28,271/-. Accordingly, AO made addition of Rs.34,271/- u/s 56(2)(vii)(b)(ii) of the Act. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. against which the assessee is in further appeal before the ITAT.

5. As per section 56(2)(vii)(b)(ii), where an individual receives any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000/-, the stamp duty value of such property as exceeds such consideration is assessable as income from other sources. Thus, where the difference between actual consideration and the stamp duty value is less than Rs.50,000/-, the difference cannot be assessed under this section. In the present case, the difference between actual consideration and the stamp duty value is only Rs.34,271/- and therefore, this difference cannot be assessed u/s 56(2)(vii)(b)(ii).

6. In view of the above legal position, we do not find any merit in upholding the addition of Rs. 34,271/- made U/s 56(2)(vii)(b)(ii) of the Act. Hence, we direct the A.O. to delete the same.

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

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- Shri Ajay Kumar Data, Alwar.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 238/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar