

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. 780/JP/2018
निर्धारण वर्ष / Assessment Year :2008-09

Smt. Asha Gupta, 3-Na-44, Jawahar Nagar, Jaipur.	बनाम Vs.	I.T.O., Ward 6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFFPG 9326 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (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 : 15/05/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of Id.CIT(A)-2, Jaipur dated 14/03/2018 for the A.Y. 2008-09 in the matter order passed U/s 143(3) read with Section 254 of the Income Tax Act, 1961 (in short the Act). Following grounds have been taken by the assessee:

- "1. The Id. CIT(A) has erred on facts and in law in upholding the action of A.O. in not allowing the claim of deduction of Rs. 35 lacs u/s 54F of the Act in respect of house property purchased from Sh. Hanuman Prasad Gupta.

2. *The Id. CIT(A) has erred on facts and in law in not following the directions given by the Hon'ble ITAT in correct prospective and also making irrelevant observations in denying the claim of deduction u/s 54F.*
3. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
4. *The appropriate cost be awarded to the assessee."*

2. Rival contentions have been heard and record perused. The facts in brief are that during the year assessee sold her half share in a land measuring 3 bhigas 17 biswa on 30.07.2007 for Rs.30 lakhs through registered sale deed. For stamp duty purposes its value was assessed by stamp authorities at Rs.40,23,250/-. On capital gain arising on sale of the said land, assessee claimed deduction u/s 54F in respect of purchase of a house at A-17, Barkat Nagar, Jaipur for Rs.35 lakhs from Shri Hanuman Prasad Gupta, father in law of the assessee. However, in the original assessment, the A.O. declined the assessee's claim of deduction U/s 54F of the Act. Against denial. of claim of deduction u/s 54F, assessee filed an appeal before the CIT(A). However, the appeal of assessee was dismissed vide order dated 21.03.2012. Against this order, assessee preferred an appeal before the Hon'ble ITAT who vide its order dated 12.06.2015 in ITA No. 515/JP/2012 set aside the matter to the file of AO with the following finding in Paras 3.6 and 4.1 of the order:

3.6 *We have heard the rival contentions and perused the materials available on record. On the issue of additional evidence, we find in the contentions of Mr. Ranka that proceedings u/s 147 of the Act in the case of vendor were subsequently initiated and re-assessment order has been passed on 31-10-2014 as against the order of the CIT(A) dated 21-03- 2012. The additional evidence in question is part of the income tax records only besides it effects the issue in material terms. Thus, looking at the facts, we are of the view that assessee was prevented by a reasonable cause in producing them before lower authorities as they were either nonexistent or not unknown. In view thereof we are inclined to admit the additional evidence in question.*

4.1 *Adverting to the facts, the assessee has claimed the purchase of residential house and the vendor has been assessed on the same thereof. The discovery of these documents goes to the root of the matter. We were not informed about any appeal filed hi' assesse's father-in-law, consequently final outcome of taxability is unascertainable at this stage. Thus, in the present facts and circumstances of the case, it will be desirable to set aside the matter back to the file of the AO to examine the relevant issues afresh in view of the reassessment order in the case of Shri Hanuman Prasad Gupta, assessee 's father-in-law/vendor of the impugned asset.*

In the set aside proceedings, the A.O. without following the directions of the Tribunal, again confirmed the addition, against which the assessee is in further appeal before the ITAT.

3. We have considered the rival contentions and carefully gone through the orders of the authorities below as well as order of the

Tribunal dated 12/6/2015. We found that the Tribunal in its order dated 12/6/2016 has taken note of the fact that assessee has purchased the residential house and the vendor (seller) has been assessed on the same. However, since the information about filing of appeal by the vendor was not available before it, therefore, the matter was set aside to the AO to examine the relevant issue afresh in view of the reassessment order in case of Shri Hanuman Prasad Gupta, the vendor (seller) of the impugned asset. Thus, in the set aside proceedings, scope of the AO was limited to verify whether the assessment of capital gain in the hands of Sh. Hanuman Prasad Gupta has become final or not.

4. From the record we found that in case of Shri Hanuman Prasad Gupta, the vendor (seller) of the impugned asset., le department issued notice u/s 148 on the basis of information that he has sold house no. A-17, Adarsh Basti, Tonk Phatak, Jaipur for Rs.35 lakhs to the assessee as per ikrarnama dated 15.02.2008 & 15.06.2008 and affidavit dated 11.11.2010. In the assessment order passed u/s 143(3)1147 dated 31.01.2014 of Shri Hanuman Prasad Gupta, a finding is given that possession was handed over to the buyer in February, 2008 and thus, the transaction relating to the sale of immovable property stands completed in FY 2007-08 relevant to AY 2008-09. Accordingly, on sale

of the house, Shri Hanuman Prasad Gupta was assessed at long term capital gain of Rs.31,46,668/- as against long term capital gain of Rs.19,74,193/- computed by him by disallowing part of indexed cost of acquisition/improvement. Against this order SH. Hanuman Prasad Gupta preferred an appeal before Hon'ble ITAT who in ITA No. 807/JP/2016 dated 15.01.2017 allowed the indexed cost of acquisition/improvement as claimed and thus, long term capital gain is determined at Rs.19,74,193/-. This order has become final. Thus, when Shri Hanuman Prasad Gupta is assessed to long term capital gain with reference to the sale of his property at A-17, Adarsh Basti, Tonk Phatak, Jaipur for Rs.35 lakhs, claim of the assessee for deduction u/s 54F in respect of the same house property cannot be denied to assessee. Accordingly, we direct the A.O. to allow assessee's claim of deduction U/s 54F of the Act.

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

Order pronounced in the open court on 15th May, 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:- 15th May, 2019
*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Asha Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(1), Jaipur.
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. 780/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar