

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. 982/JP/2017  
निर्धारण वर्ष / Assessment Year :2014-15

Shri Sanjay Jindal 104, Sadar Bazar, Nasirabad.	बनाम Vs.	ACIT, Circle-2, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABOPJ4525A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 983/JP/2017  
निर्धारण वर्ष / Assessment Year :2014-15

M/s. Jindal Roadways Pvt. Ltd 1163-B, Subhash Ganj, Nasirabad.	बनाम Vs.	ACIT, Circle-2, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABCJ3550E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Ajay Somani, (CA)  
राजस्व की ओर से / Revenue by : Shri A.K. Mahala, (JCIT)

सुनवाई की तारीख / Date of Hearing : 11/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 10/06/2019

आदेश / ORDER

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

These appeals are filed by the assessee against the separate orders of Id.CIT(A), Ajmer dated 05-10-2017 for the A.Y. 2014-15 in the matter of assessment orders passed u/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. Grounds of appeal raised by the assessee in ITA No. 982/JP/2017 for the A.Y 2014-15 are as under: -

1. That the Id. CIT(A), Ajmer has grossly erred in confirming the additions in the hands of Director regarding the sale of Depreciated Asset (Tow House No. 70 situated at Village-Shilloar Raicher Panvel District Raigad), as the same was solely owned, used possessed and was acquired by investing its own funds by the company-M/s. Jindal Roadways Pvt. Ltd despite all evidences as regards payments by company, used of asset, depreciation and credits into Company's Account and Depreciated Asset A/c on record.

2. That, without prejudice to Ground 1 & 3, the Id. CIT(A), Ajmer has erred in computing the taxable Capital Gain at Rs. 30,49,156/-. The same ought to be Rs.20,71,917/- as under: -

Sale consideration Rs.47,00,000/-

Less: Indexed Cost of Acquisition

F.Y	Amount Paid	Capital Index	Index Cost
2007-08	Rs.9,50,600/-	551	Rs.16,19,988/-
2008-09	Rs.5,00,400/-	582	Rs. 8,07,346/-
2009-10	Rs.95,000/-	632	Rs. 1,41,147/-
2010-11	Rs.26,200/-	711	Rs.34,602/-
2013-14	Rs.25,000/-	939	Rs.25,000
Total	Rs.15,97,200/-		Rs.26,28,083/-

Rs. 26,28,083/-

LONG TERM CAPITAL GAIN Rs.20,71,917/-

3. That the Capital Gain has suffered double taxation as Id. AO has subjected one sale transaction to tax in the hands of Appellant (Director) as well as M/s. Jindal Roadways Pvt. Ltd confirming additions in both files is bad in law and facts of the case. Simultaneous appeals are being submitted by Appellant and Company.

4. That the Appellant craves to add, amend and alter any of the grounds before or at the time of appellate hearing."

3. Grounds of appeal raised by the assessee in ITA No. 983/JP/2017 for the A.Y 2014-15 are as under:-

1. That the Id. CIT(A), Ajmer has grossly erred in confirming the additions/taxability merely on the basis that the property was purchased in the name of appellant's director Shri Sanjay Jindal as:

-Appellant was the actual and beneficial owner of the property.

-Appellant funds have been utilized for the purchase of property and sale proceeds was also received by the company only.

-Since the day company purchased the property it has been shown as assets of the company, was being used by its staff as staff residential quarter.

-Depreciation has been allowed to appellant on the property in all earlier scrutiny assessment order u/s. 143(2) of Income tax Act, 1961.

2. That the Id. CIT(A) Ajmer has grossly erred in confirming the additions/taxability for one sale transaction in two hands, in the hands of Appellant company, M/s. Jindal Roadways Pvt. Ltd and its director, Sh. Sanjay Jindal.

(Simultaneous Appeals are being preferred against Orders 689 & 691 dated 05.10.2017)

3. That without prejudice to the above, the Id. CIT(A) Ajmer, has erred in confirming the additions of Rs. 33,26,223/- in the hands of Appellant Company as:

-The Id. CIT(A) Ajmer, has erred by overlooking the Accounting Concepts and Income Tax Provisions as regards taxability of an asset in Depreciable Building Block 10%

-The Appellant's treatment is in accordance with IT Provisions and needs no interference.

Opening WDV of the Block (Building 10%)	46,82,099
Add: Two Additions (49,77,498 + 45,95,748)	95,73,246
Less: Sale Proceeds	<u>47,00,000</u>
	95,55,345
Less: Allowable Depreciation (Section 32)	<u>7,25,747</u>
CLOSING WDV	<u>88,29,598</u>

- That profit on sale of property amounting Rs.3326223/- was only book profit, not the profit as per Income tax act, 1961. Hence, the same have already been added by the appellant while computing the loss as per provision of Income tax act, 1961

4. That without prejudice to the above, appellant has also not been allowed the excess depreciation which would have been if the property under consideration was not purchased by the company, accordingly sales consideration would also have not been deducted from the block value while computing the depreciation for the year under consideration as per Income tax act, 1961.

5. That the Appellant craves to add, amend and alter any of the grounds before or at the time of appellate hearing.

4. Rival contentions have been heard and record perused. Facts in brief are that the assessee company M/s Jindal Roadways Pvt. Ltd. purchased residential building for use of its staffs in the year 2007. The

building was purchased in the name of its Director Shri Sanjay Jindal. The payment was given by the assessee company out of its bank account. Since the day, the company has purchased property, it has been shown as an asset of the company and was being used by it as staffs' residential quarters. The assessee company has also shown the building in the block of its assets on which continuously depreciation was claimed and same was also allowed even in the scrutiny assessment U/s 143(3) of the Act. During the year under consideration, the assessee had sold the building. The sale proceeds were duly reduced from the block of assets and deprecation was claimed on the reduced block which is eligible for 10% rate of depreciation U/s 32 of the Act. The A.O. added the capital gain on sale of building both in the hands of the company as well as in the hands of the Director of the company. The A.O. was of the view that the assessee company has sold its property but has deducted profit on sale of its company's assets amounting to Rs. 33,26,237/- in the computation of income so filed alongwith the return. At the very same time, the assessment was framed in the hands of its Director Shri Sanjay Jindal, the A.O. added the long term capital gain in its income on the plea that the asset so sold was registered in the name of Shri Sanjay Jindal.

5. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. in the hands of the assessee company M/s Jindal Roadways

Pvt. Ltd., and also Sanjay Jindal, against which both the assessee are in further appeals before the ITAT.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that M/s Jindal Roadways Pvt. Ltd. is engaged in the business of transportation, running vehicles on rent and dealing in shares business. During the year under consideration, the assessee company has sold its building used for its staffs' quarter, however, the profit on sale of building was not shown in the computation of income, accordingly, the A.O. added the capital gain so earned by taking its cost of acquisition. The A.O. observed that the building so sold is not registered in the name of the company but in the name of its Director Sanjay Jindal and since Shri Sanjay Jindal has not shown profit on sale of building in its computation, the A.O. added the same also in the hands of Shri Sanjay Jindal while framing the assessment U/s 143(3) of the Act.

7. From the record we found that the house property (Residential Flat) was sold on 06/02/2014 for Rs. 47,00,000/- and the assessee company credited a sum of Rs. 33,26,237/- as profit on sale of Fixed Assets calculated as under:

DATE	PARTICULARS	Amount
11-02-2011	Total Cost from F.Y. 2007-08	15,72,200
09-02-2013	NOC Cost	<u>25,000</u>
		15,97,200

## Less: Depreciation as per Companies Act

F.Y. 2010-11	10524.29	
F.Y. 2011-12	78083.79	
F.Y. 2012-13	73976.92	
F.Y. 2013-14	<u>60852.23</u>	<u>(223437.23)</u>
06-02-2014	WDV OF FLAT STAFF QUARTER	13,73,762.77
06-02-2014	Sale proceeds	<u>47,00,000.00</u>
31-03-2014	Profit on sale credited to P&L a/c	<u>33,26,237.23</u>

While computing total income for A.Y. 2014-15 as per provisions of Section 32 of the Income Tax Act, the assessee company added back the depreciation debited in P& L a/c and deducted the sum of Rs. 33,26,237/- (Profit on sale of property). The same was done in view of Block concept under Income Tax provisions. The A.O. has wrongly added back the deduction of Rs. 33,26,237/- regarding the profit on sale of staff quarter as per company accounts which has confirmed by the Id C.I.T(A). From the record we also found that in computing total income, as per Income Tax Act the appellant company rightly added back the depreciation debited (as per Companies Act) in Profit and Loss a/c and claimed allowable depreciation as deduction in accordance with section 32. The practice has been followed throughout. Moreover, the Erstwhile A.O. accepted the aforesaid accounting treatment (i.e. disallowing of depreciation charged in company's profit and loss account and allowing deduction u/s 32 as per block of asset concepts) in their undernoted orders of earlier years:-

A.Y. 2012-13 order u/s 143(3) dt 10/03/2016

A.Y. 2013-14 order u/s 143(3) dt 10/03/2016.

8. As per the records, the assessee company invested in purchase of residential flat house property for use as staff quarters payments were made vide account payee cheques by company to Builder from F.Y. 2007-08 to F.Y. 2010-11 (A.O. order Pg. No 3 assessee's letter dated 28.12.2016). Being residential area, the flat (used as staff quarters) was registered in the name of director Sh. Sanjay Jindal. The asset purchased was duly incorporated in books of appellant and stood included in fixed assets schedule. The flat was used for residence of appellant's staff. Assessee being a company, depreciation was charged in books of accounts as per provisions of companies act and same was debited to Profit and Loss a/c since F.Y. 10-11 to F.Y. 2013-14.

9. From the record we found that M/s Jindal Roadways Pvt. Ltd. had acquired the property in the year 2007 and the same was used by its employees as staff quarters. The entire payment for acquisition of the property was made out of funds of the company through its bank account. The building was also shown in the block of its assets wherein depreciation was claimed throughout the year 2007-08 to 2013-14 and the same was also allowed by the department U/s 143(3) of the Act. We found that during the year under consideration when the asset was

sold by the assessee company, it has duly reduced its block of assets and depreciation was claimed on the reduced block @ 10%. Thus, we observe that proper treatment has been given by the assessee as per the income tax provisions while selling of its assets and reducing the sale proceeds from the block of its assets and claiming depreciation on the reduced block. Under the provisions of Income Tax Act when the block of assets continues, there is no requirement for offering the capital gain so sold during the year out of such blocks. Thus, the assessee's treatment is in accordance with the income tax provisions. Merely because the asset was purchased in the year 2007 in the name of its Director but used by the assessee company for its business purpose and entire investment was out of the companies funds, there is no reason to add the capital gains in the hands of the Director merely because in the year of purchase, the property was registered in his name. However, we found that the A.O. has raised some query by reproducing its block of assets as appearing in the balance sheet of the assessee and raised a doubt that the block of assets of the company did not reflect this particular asset. Therefore, to the limited extent of again verifying the assets which has been sold during the year, which existed in the block of assets since 2007 restore back to the file of the A.O.. After verification, the A.O. is directed not to make any addition under the head capital gains if it is found that the asset has been

shown in the block of assets of the company since 2007 on which regular depreciation was claimed and allowed by the department. We also direct the A.O. not to tax the same capital gain again in the hands of Shri Sanjay Jindal merely because it was registered in the name of Shri Sanjay Jindal in so far as the assessee company was the beneficial owner of the assets and all payments were made out of the funds of the assessee company and used by it for the purpose of its business i.e. for residence of his staff as staff quarters. We also direct the A.O. to reverify the block statement of assets and to ensure that entire sale consideration has been reduced while arriving at written down value. On such written down value only, the assessee is eligible to claim depreciation. We direct accordingly.

11. In the result, the appeal in ITA No. 983/JP/2017 is allowed for statistical purposes only whereas appeal in ITA No. 982/JP/2017 is allowed.

Order pronounced in the open court on 10<sup>th</sup> June, 2019.

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10<sup>th</sup> June, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellant- (i) Shri Sanjay Jindal, Nasirabad.

Sd/-

(रमेश सी शर्मा)

(RAMESH C SHARMA)

लेखा सदस्य / Accountant Member

(ii) M/s. Jindal Roadways Pvt. Ltd,  
Nasirabad.

2. प्रत्यर्थी / The Respondent- The ACIT, Circle-2, Ajmer.
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. 982 & 983/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar