

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री रमेश सी० 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. 945/JP/2016  
निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT, Circle-2, Ajmer.	बनाम Vs.	Smt. Rekha Sharma, 113, Adarsh Nagar, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BSWPS 1066 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (ACIT)  
निर्धारिती की ओर से / Assessee by: Shri Sunil Porwal (C.A.) &  
Shri C.P. Kothari (C.A.)

सुनवाई की तारीख / Date of Hearing : 10/07/2019  
उदघोषणा की तारीख / Date of Pronouncement: 23/07/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated  
31.08.2016 of the Id. CIT(A), Ajmer for the assessment year 2012-13.

The assessee has raised the following grounds:-

*"(1) Whether in view of the facts and circumstances of the case,  
the Ld. CIT(A) is justified in deleting the addition of Rs. 125  
Lakhs made by the AO on account of disallowance of cost of  
improvement U/s 48 (1)(ii) .*

*2. Whether in view of the facts and circumstances of the case, the Ld. CIT(A), Ajmer is justified in ignoring the fact that the payment of Rs. 125 lakhs was made to her spouse in lieu of decree of divorce and the withdrawals of all the cases by the first party comprising of assessee's husband and others filed against the assessee.*

*3. The appellant craves to add, amend, alter, delete or modify the above grounds of appeal before or at the time of hearing."*

2. The assessee is an individual and filed her return of income on 31.03.2013 declaring total income of Rs. 1,64,56,006/-. During the year under consideration, the assessee sold a property bearing No. 135, Sector-6, Panchkula, Chandigarh for a consideration of Rs. 4.57 crores. The AO noted that while computing the capital gain arising from sale of the said property the assessee has deducted a sum of Rs. 1,26,56,118/- being index cost of Rs. 1.25 crores paid to her husband Shri Mahesh Chand Sharma in pursuant to a settlement between the assessee and her husband under which both the parties agree to dissolve their marriage by decree of divorce . The AO asked the assessee as to why Rs. 1,26,56,118/- given to her husband and claimed as cost of improvement should not be disallowed. In reply the assessee submitted that the plot of land was purchased from the financial source of the assessee in her name and subsequently it was constructed by the

father-in-law of the assessee from the common funds out of his own financial source, the source of the assessee's husband as well as the assessee. Since, the said house was constructed for the family and the husband of the assessee was in occupation therefore, the assessee claimed that to get the same vacated the assessee paid the said amount to her husband. The assessee also claimed that the husband of the assessee was the owner of the house and therefore, the said amount was paid towards his share. The AO did not accept the said contention of the assessee and disallowed the claim by holding that Section 48 of the I.T. Act allow the deduction from the value of consideration only towards expenses incurred "wholly and exclusively" in connection with the transfer of capital assets. Therefore, compromise amount do not constitute cost of acquisition. Thus, the AO has rejected the claim of the assessee that the amount was paid to her husband towards the cost of improvement. The assessee challenged the action of the AO before the Id. CIT(A) and reiterated its her contention that the amount was paid to her husband towards cost of improvement and getting the property vacated. The Id. CIT(A) accepted the claim of the assessee and allowed the deduction claimed by assessee.

3. Before us, the Id. DR has submitted that the amount paid to her husband under the settlement is not towards the cost of improvement or removing any encumbrance on the property but as per settlement deed the amount was paid to settle various issue between the parties and not only for vacating the house. Therefore, the payment made by the assessee in pursuant to the settlement and for dissolving the marriage through decree of divorce cannot be held as deductible claim U/s 48 of the Act. He has relied upon the order of the Assessing Officer

4. On the other hand, the Id. AR of the assessee has referred to the compromise deed and submitted that since Shri Mahesh Chand Sharma was in the occupation of the house and therefore, the amount paid to him is allowable deduction U/s 48(ii) of the Act for cost of improvement. In support of his contention, he has relied upon the decision of Hon'ble Bombay High Court in case of CIT vs. Abrar Alvi (2001) 247 ITR 312. He has also relied upon the decision in case of CIT Shakuntala Kantilal 190 ITR 56 as well as the decision of Hon'ble Madras High Court in case of CIT vs. Bradford Trading Co. Pvt. Ltd. 261 ITR 222 and submitted that the Hon'ble High Courts have taken a consistent view that the amount paid for removing encumbrance and settlement of claim is expenditure incurred in connection of transfer of capital assets

deductible U/s 48 of the Act. He has supported the order of the Id. CIT(A).

5. We have considered the rival submissions as well as the relevant material on record. The assessee has claimed a deduction of Rs. 1.25 crores and index amount of Rs. 1,26,56,118/- as cost of improvement of the residential house in question sold by the assessee. The assessee has explained before the AO as well as the Id. CIT(A) that the plot of land in question was purchased by the assessee from her own funds however, the construction of the house on the said plot of land was made from the funds of her husband and her father-in-law as well as the assessee. Thus, the payment to the husband was made towards the cost of improvement being the cost of construction of the house. The assessee has also referred to the settlement deed between the assessee and her husband while dissolving their marriage by decree of divorce. In the said compromise deed it was agreed upon between the parties that on receipt of the said amount of Rs. 1.25 crores Shri M.C. Sharma after quashing of the FIR No. 319/09 and grant of a decree of divorce by way of mutual consent, shall withdraw all the cases filed against the assessee Smt. Rekha Sharma in respect of the ownership/possession of the house in question. Therefore, the said

payment was made by the assessee to resolve various disputes between the parties including dissolving the marriage as well as quashing of FIR and other cases. The assessee undisputedly claimed the said payment towards the cost of improvement and the said fact was also considered the Id. CIT(A) in the impugned order in para 4.3.i that while computing the capital gain on sale of flat the assessee has claimed the amount of Rs. 1.25 crores paid to her husband as cost of improvement. The assessee in the submissions before the authorities below explained that since the construction of the house was completed from the fund of the husband as well as father-in-law therefore, this payment is made towards the cost of improvement. We find that if the payment is made towards the cost of improvement/construction as incurred by the husband then the same is an allowable deduction from the consideration however, if the assessee has already claimed the indexed of construction cost of the house while computing the capital gain then by claiming this amount of Rs. 1.25 crores and index value of the same at Rs. 1.26,56,118/- the same would be a double deduction towards the cost of construction/improvement. The parties under the compromise deed have settled various disputes including the amount in question which might have claimed by her husband towards the cost of

construction of the house and therefore, the said payment of Rs. 1.25 crores to the husband towards construction of the house is allowable either actual amount being the cost incurred by the assessee at the time of payment or the index cost of construction of the house. If the assessee has already claimed the index cost of construction of the house then the claim of amount paid to her husband towards the cost of construction would amount to double deduction of the cost of construction. Accordingly, we set aside this issue to the record of the Assessing Officer to verify the relevant details whether while computing the capital gain the assessee has also claimed the index cost of construction of the house or not and then decide this issue after giving an opportunity of hearing to the assessee in the light of above observation.

In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 23/07/2019.

Sd/-  
( रमेश सी० शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 23/07/2019.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

**\*Santosh.**

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

1. अपीलार्थी / The Respondent- ACIT, Circle-2, Ajmer.
2. प्रत्यर्थी / The Respondent- Smt. Rekha Sharma, Ajmer.
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. 945/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar