

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 126/Ind/2019

Assessment Year 2015-16

PAN : BCJPG9107Q

Shri Manoharlal Gupta,
204, Sant Marg,
Gandhi Nagar, Indore

V/s

ITO-4(5),
Indore

(Appellant)

(Respondent)

Revenue by	Shri R.P. Mourya, Sr.DR
Assessee by	S/Shri M.D. Kabra & J.N. Sharma, ARs
Date of Hearing	30.07.2019
Date of Pronouncement	31.07.2019

ORDER

PER MANISH BORAD, A.M.

The above captioned appeal filed at the instance of the assessee pertaining to Assessment Years 2015-16 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'], Indore dated 14.11.2018 which is arising out of the order u/s 143(3) of Income Tax Act, 1961 dated 15.12.2017 framed by ITO-5(5), Indore.

2. Initially the assessee raised 25 grounds of appeal which were descriptive and argumentative in nature and not as per Rule 8 of the Income Tax Appellate Tribunal Rules, 1963. Subsequently revised grounds were filed by the assessee on 24.4.2019 raising following grounds;

1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both on facts and in law in confirming addition of Rs. 92,78,000/- made by AO invoking section SOC whereas the appellant cited before CIT(A) case laws in his favour that first proviso of section SOC is curative in nature and should be given retrospective effect from 01.04.2003, the date effective from which section SOC was introduced. The **appellant had relied on the judgment of ITAT Indore Bench** in the case of Manoj Yadav (Smt. Rukmani Yadav) and Anr.; Vs. Income Tax Officer and Anr. (order passed on October 9(**2018**)*

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both on facts and in law in not considering **complete details of payments made towards transfer expenses which are fully verifiable.***

3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both on facts and in law in confirming part disallowances of exemption claimed u/s 48B on the ground taken by the AO that reinvestment in agricultural land in FY 2012-13 was made prior to the date of sale/registry in FY 2014-15. The appellant in his favour relied on the judgment of ITAT Indore Bench in the cases of Hemant Kumar Nema Anr. Vs. ACIT 3Cl, Indore. The appellant had also relied on CBDT circular 359 dated 10th May, 1983.*

4. That on the facts and in the circumstances of the case, the Ld. CITCA) erred both on facts and in law in confirming part disallowance of exemption u/s 54B as done by the AO on the ground that re-investment in agricultural land was made in the name of appellant 's son. The appellant had relied on the judgment of MP High Court in his favour and other case laws as well. Judgment of ITAT Indore Bench in the case of ACIT 2Cl) Indore v. Deepak Kumar Dhawan was also cited before CITCA) to draw support from.

5. That on the facts and in the circumstances of the case, the Ld. CITCA) erred both on facts and in law in not accepting deposit of Rs. 42,53,000/- made in Capital Gain Deposit Account Scheme, 1988 though the appellant had relied on judgment in the case CIT v. Rajesh Kumar Jalan of Gauhati High Court.

6. That the order of the Ld. CITCA) is liable to be quashed as he has not considered order of Tribunal and Courts of Law including jurisdictional High Court of MP and ITAT , Indore Bench and other courts as well.

7. The appellant craves to alter / amend/ add/withdraw or raise any additional ground of appeal during the course of hearing.

3. Briefly stated facts as culled out from the records are that the assessee is an individual earning income from other sources. E-return of income filed on 26.08.2015 for Assessment Year 2015-16 declaring income of Rs.6,75,820/-. Case selected for scrutiny through CASS following serving of notices u/s143(2) and 142(1) of the Act. During the course of assessment proceedings Ld. A.O observed that the assessee has sold moveable property measuring

0.587 hectare and 2.014 hectare for total consideration of Rs.5,82,22,000/- through sale deed dated 12.5.2014. Fair market value assessed by Stamp Valuation Authority was at Rs.6,75,00,000/-. Ld. A.O applied Section 50C taking the fair market value and made addition of Rs.92,78,000/-. Ld. A.O made addition in respect of excess claim of index cost of acquisition. Disallowance was also made for transfer expenses claimed by the assessee. Ld. A.O denied the exemption claimed u/s 54B of the Act for the agriculture land purchased in the name of assessee's son. Ld. A.O accordingly assessed the income at Rs.2,87,87,881/- under the head Long Term Capital Gain. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded. Now the assessee is in appeal before the Tribunal.

4. At the outset Ld. Counsel for the assessee during the course of proceedings before the Tribunal on 11.7.2019 requested for admitting the Valuation Report of registered Valuer in support of its contention that the Ld. A.O was not justified in adopting the fair market value as per the Stamp Valuation Authority since the impugned land was adjoining to slum area. The request of the

assessee was accepted and on 25.7.2019 Valuation Report from the registered Valuer Shri Surendra Kumar Jain (Bajaj) was placed on record valuing the land under consideration at Rs.4,86,39,000/-. During the course of hearing Ld. Counsel for the assessee requested for setting aside all the issues raised in the appeal to the file of Ld. A.O for deciding since this fact was not placed before the Ld. A.O. Ld. Departmental Representative was fair enough in not opposing the request of the assessee to set aside the issues to the file of Ld. A.O for adjudicating the issues afresh.

5. We have heard rival contentions and perused the records placed before us. Assessee requested through grounds of appeals relating to the additions confirmed by Ld. CIT(A) made by Ld. A.O u/s 50C of the Act, denying of exemption u/s 54B of the Act and disallowance of index cost of acquisition. We observe that the initial point of Long Term Capital Gain starts from the sale consideration. The assessee received sale consideration of Rs.5,82,22,000/- from sale of land in total measuring to 2.014 hectare. Ld. A.O adopted the fair market value on the basis of Stamp Valuation Authority at Rs.6,75,00,000/-. As per the registered Valuer report filed during the course of hearing

before us the fair market value of the land in question is valued at Rs.4,86,39,000/-. The registered valuer has reduced the value by 15% on account of poor location i.e. slum locality, disputed approach and depression in the market.

6. We observe that the valuation report of the registered valuer was not for consideration before the Ld. A.O before making the addition. We, therefore, in the interest of justice and totality of facts set aside the issue adopting sale consideration for computing the market value to the file of Ld. A.O for deciding afresh. As regards other disallowances and denial of benefit u/s 54B of the Act Ld. Counsel for the assessee referred to various judgments including that of jurisdictional High court as well as the Tribunal. Since one of the major issue has already been decided to set aside to the file of Ld. A.O, we deem it proper to do the same with the remaining issues also raised before us. We however direct the Ld. A.O to decide the issues as per the provisions of law and judicial pronouncements with reference to the judgments of jurisdictional high court as well as the decision of Indore Bench of I.T.A.T. In the result all the issues raised in this appeal are set aside to the file of Ld. A.O for deciding afresh as

per the terms and directions indicated above. Needless to mention that proper opportunity of being heard should be given to the assessee.

7. In the result appeal of the assessee is allowed for statistical purposes.

The order pronounced in the open Court on 31.07.2019

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 31 July, 2019
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore