

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES 'SMC', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
Before : Shri Vijay Pal Rao, Judicial Member

आयकर अपील सं./ITA No. 151/JP/2018
निर्धारण वर्ष/Assessment Years : 2011-2012

Shri Pawan Kumar Jain F-811-812, Road No. 14 VKI Area, Jaipur	बनाम Vs.	The ITO Ward- 4(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPJ 0155A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by :Shri S.L. Poddar Advocate
राजस्व की ओर से / Revenue by : Shri A.K. Mahla, JCIT- DR

सुनवाई की तारीख / Date of Hearing : 26/09/2019
घोषणा की तारीख / Date of Pronouncement : 29 /10/2019

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order dated 24-11-2017 of Id. CIT(A) -2, Jaipur for the Assessment Year 2011-12 wherein the assessee has raised following grounds of appeal.

“1. That under the facts and circumstances of the case the Id. CIT(A) has erred in confirming the action of the AO in enhancing the income from Long Term Capital Gain from Rs. 7,44,990/- to Rs. 18,42,223/-“

2. That under the facts and circumstances of the case the Id. CIT(A) has erred in not allowing the cost of construction as cost of

improvement of the property in spite of submitting the substantial evidences regarding cost of construction.’’

2.1 At the time of hearing the appeal of the assessee, the Bench observed that there is a delay of 3 days in filing the present appeal by the assessee for which the ld.AR of the assessee filed an application for condonation of delay alongwith affidavit of dealing clerk of the counsel of the assessee.

2.2 I have heard the ld.AR and ld. DR and carefully perused the material available on record. The cause of delay has been explained by the ld.AR of the assessee assessee in the application for condonation of delay mentioning therein that dealing clerk in the office of the counsel was on leave due to marriage of his sister. After the joining the office by the dealing clerk, the case file of the assessee was traced out and thus the present appeal of the assessee was filed with a delay of three days. The affidavit of one Shri Nishant Lohiya, dealing clerk of the counsel of the assessee is filed on record. Accordingly, in view of the facts and circumstances of the case and the cause of delay explained by the ld.AR of the assessee , I am satisfied that the assessee was having reasonable cause for delay of three days in filing the present appeal. Hence, the same is condoned.

3.1 At the time of hearing, the ld.AR of the assessee stated at Bar that he does not want to press the Ground No. 1 of the appeal and the same may be dismissed as

not pressed for which the Id. DR has no objection. Hence, the Ground No. 1 of the assessee is dismissed being not pressed by the Id.AR of the assessee.

4.1 The Ground No. 2 of the assessee is regarding disallowance of cost of construction cost of improvement of property while computing the Long Term Capital Gain.

4.2 Brief facts of the case are that the AO observed that as per the sale deed there is no mention of any construction on the plot of land sold by the assessee. Therefore, the AO issued summons u/s 131 of the Act to the persons who had supplied the material for construction and to carry out the construction work as claimed by the assessee. The summons could not be served upon by the postal department and returned back as persons are not available at the given addresses. The AO noted that the valuation of the property for the purpose of stamp duty is done regarding the land and area of plot and no valuation has been done for construction on the said plot of land. The assessee was also asked to explain the source of impugned construction cost which was explained by the assessee that he had withdrawn the cash from M/s. P.J. Arts, Proprietorship concern of the assessee. Accordingly, the AO disallowed the deduction on account of cost of construction while computing the Long Term Capital Gain and thus made the addition.

4.3 The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

4.4 Before the Tribunal, the Id.AR of the assessee submitted that the assessee has duly given the details of cost of construction alongwith persons who have carried out the work of construction of boundary wall. Since it was the construction of boundary wall and not the construction on any house property or building on the land, therefore, it was not mentioned in the sale deed and no valuation was done for the purpose of stamp duty. Thus the Id.AR of the assessee submitted that once the boundary wall was in existence on the land and the assessee has given details alongwith persons who had done the work then the claim of the assessee cannot be denied in toto. The Id.AR of the assessee referred to the ledger account showing the payments made to these persons for construction work. He has also referred to the receipts as well as affidavits of these persons in respect of the work carried out and payments received. Thus the Id.AR of the assessee submitted that when the assessee has discharged his onus by producing the relevant records in support of the claim then the claim of the assessee cannot be denied merely on the ground that summons issued to these persons were not served upon and consequently there is no mention of the construction in the sale deed.

4.5 On the other hand, the ld. DR submitted that sale deed does not mention any construction work on the plot of land. It was only a transaction of sale of plot of land. The AO issued summons to the persons through whom assessee claimed to have got the construction work done and payment was made. The AO noted that there was no withdrawal or drawings from the business entity. Therefore, the source of cost of construction remained unexplained. The ld. DR relied on the orders of the authorities below.

4.6 I have considered the rival submission as well as the relevant materials available on record. The assessee has claimed the cost of construction of Rs. 3.83 lacs on account of boundary wall as deduction while computing the Long Term Capital Gain from sale of the property in question. The AO having gone through the sale deed noted that there was no mention of any construction of the building on the land sold by the assessee and further the stamp duty authority has also not made any valuation for construction on the said plot of land. The assessee furnished the details of cost of construction with the name of persons to whom payment was made for construction work carried out by them. However, the summons issued by the AO u/s 131 of the Act to these persons returned back unserved by the postal department. Therefore, the AO did not accept this claim of the assessee and disallowed the deduction claimed by the assessee against Long Term Capital Gain.

The assessee has not produced any documentary evidences in support of the construction work of boundary wall except the receipts issued by these persons namely Shri Sharwan Lal Saini, Shri Arjun Lal Kumawat and Shri Sita Ram Verma, as well as affidavit of these persons. However, if the boundary wall which is a matter of fact and existence is found existed on the plot of land then the claim of the assessee cannot be rejected in toto. The only dispute between the assessee and AO is with regard to correct cost of construction of boundary wall. The AO has not conducted any enquiry to contradict the claim of boundary wall on the plot of land. The AO has denied the claim of cost of construction but has not denied that boundary is constructed. Therefore, once the existence of the assessee's boundary wall is not denied by conducting any enquiry or verification of the fact by the AO then the claim of cost of construction made by the assessee cannot be denied in toto. The assessee has claimed the cost of construction at Rs. 3.83 lacs and filed the receipts as well as affidavits of three persons to whom payment was made for the work of cost of construction of boundary wall. Though the AO could not examine these persons for want of service of notice yet the cost of construction of boundary wall could have been otherwise estimated by the AO through expert being DVO. In the absence of carrying out such an exercise of ascertaining the correct cost of construction on the part of the AO, the evidences produced by the

assessee cannot be rejected. Accordingly, in the facts and circumstances of the case, the claim of cost of construction of boundary wall deserves to be allowed.

4.6.1 Before parting with the issue, it is clarified that since it is a case of construction of boundary wall, therefore, the non-mentioning of the same in the sale deed will not ipso fact lead to the conclusion that boundary wall was not in existence on the plot of land. Thus the appeal of the assessee is partly allowed.

5.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29 /10/2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 29 /10/ 2019

*Mishra

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

1. अपीलार्थी / The Appellant-Shri Pawan Kumar Jain, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 4(2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.151/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar