

आयकर अपीलीय 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.511/Ind/2013
Assessment Year 2008-09

Smt. Manorama Devi Agrawal, W/o Prakashchandraji Airen, 6/2 North Rajmohalla, Indore (Appellant)	Vs.	Income Tax Officer-3(3), Indore (Respondent)
PAN No.AGUPA5295K		

Revenue by	Shri K.G. Goel, Sr.DR
Assessee by	Shri Mayank Pandey, CA
Date of Hearing	19.11.2019
Date of Pronouncement	21.11.2019

ORDER

PER MANISH BORAD, AM

The above captioned appeal filed at the instance of the assessee pertaining to Assessment Year 2008-09 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-III (in short 'Ld.CIT(A)'), Indore dated 22.03.2013 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 16.12.2010 framed by ITO-3(3), Indore.

2. Assessee has raised following grounds of appeals;

1. *That the learned CIT (A) failed to appreciate the facts that seller has sold Agriculture land & land was diverted by purchaser for business purpose from revenue authority for his business. Hence the applicable value should be as per Agriculture land & therefore the capital gain should be calculated as per Guideline of Agriculture land & not residential land.*
2. *That the learned CIT (A) failed to appreciate the facts that the land was originally sold in 1995 & the sale Deed was executed in 2007. In terms of Agreement of 1995 & supplementary Agreement 2004 & the payment shown in sale Deed confirming original payment received in 1995 & as per Agreement, 1995 and 2004 their was a lot of dispute in & there was conditional Agreement for settling all disputes & the possession of land was already handed over long back to purchaser hence the capital gain should be calculated in terms of agreement dated 1995.*
3. *That the learned CIT (A) failed to appreciate that the normal transaction of sale the purchaser has right to . got Registered sale Deed at his nominee/Company /Firm & which seller in bound to do it & same has been done with reference to earlier agreements and therefore sale deed was executed in favour of purchaser with reference to old agreements 1995.*
4. *That, the CIT (A) failed to understand basic rule of law, because if after a sale deed execution any legal dispute arises regarding the sale deed property, the burden to solve the dispute lies on the seller on behalf. For example if third person claimed to that property and if he succeeded in his litigation so seller was bound to return consideration that this should not be mentioned in sale deed because it is a rule of law, which declared by legislature. So order of*

the CIT (A) is not sustainable as sold property title became disputed after sale.

5. The appellant craves leave to amend, after or delete any of above ground of appeal.

3. Briefly stated facts as culled out from the records are that the assessee is an individual. She filed her return of income on 27.05.2009 declaring income of Rs.1,28,553/-. On the basis of Annual Information Report assessee's case was selected for scrutiny and notices u/s 142(1) and 143(2) were duly served upon the assessee. During the year under appeal assessee sold plot of land on 27.9.2007 to M/s Balaji India Infrastructure Pvt. Ltd . This land was situated at 515/4 Village Sirpur, Tehsil & District Indore measuring 40890 sq.ft.. Sale consideration was declared at Rs.17,51,000/-. Assessee contended that the alleged land is an agriculture land and vide original sale deed dated 6.5.95 this land was sold at Rs.12,00,051/-. Subsequently second agreement dated 23.11.2004 was entered revising the consideration to Rs.17,51,000/-. But since the sale could not be completed before 28.4.2005 fresh sale deed was executed on 27.9.2007 showing the sale consideration of Rs.17,51,000/-. However Ld. A.O did not

accepted the contention that the alleged land is an agriculture land. He went ahead applying the provision of Section 50C of the Act and treated the alleged land as residential land adopted the value assessed for Stamp duty purposes at Rs. 2,50,82,000/-. Ld. A.O gave the benefit of deduction of indexed cost of acquisition at Rs.22,00,000/- and made the addition for Long Term Capital Gain of Rs.2,28,28,961/-. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed.

4. Subsequently assessee preferred appeal before the Tribunal. On the date of hearing on 8.6.15 assessee failed to appear resultantly assessee's appeal was dismissed for non prosecution. Thereafter assessee filed Miscellaneous Application for restoration of the appeal for being heard on merit. The request of the assessee was accepted and the case came up before us to adjudicate the issues on merits.

5. At the outset Ld. Counsel for the assessee requested for accepting the additional evidence and also requested for restoring the issues raised in this appeal to the file of Ld. A.O for afresh adjudication after considering the additional evidence described in the following submissions made by the assessee:-

“As per the directions given by the Hon'ble bench of Income Tax Appellate Tribunal, Indore in earlier hearing dated 24.09.2019 to submit a fresh valuation report of property involved in this appeal pending before Hon'ble Tribunal. In compliance of the directions given by Hon'ble Tribunal, we are submitting herewith a fresh valuation report of property (agricultural land) situated at survey No. 515/1/2 (total area 40890 square feet, Le. 3798 square meter).

As per the valuation report given by the approved valuer on 23.10.2019, it is submitted that the total value of the said property as on 27.09.2007 (Le. on the date of execution of sale deed) was only Rs. 26,08,600/- which is per the collector guideline value for agricultural land prevailing at the time of execution of sale deed. However, as per the order passed by the Assessing Officer on 16.12.2010, the Learned A.O. was adopted value estimated by valuation officer as on the date of transfer of the said agricultural land of Rs. 2,50,82,000/- which is not correct. Also, as per the assessment order, it is submitted that the valuation done by the valuation officer is considering that the said property is situated in residential area not an agricultural land.

However, we would like to submit that the said land was got diverted by the purchaser *M/s Shri Salaji (India) Infrastructure Private Limited* through its director Mr. Vijay Kumar on 30.12.2008 after execution of sale deed. Thus, before diversion order passed by the revenue authority on 30.12.2008, the said land was registered as agricultural land in revenue records. For your kind verification the order of diversion dated 30.12.2008 is enclosed herewith.

Also, it is highlighted before Hon'ble Tribunal and also in the records of Income Tax Department that the property under consideration was in disputes with M.P. Govt. and Nagar Nigam Indore. Therefore, it is highly possible that the actual market value could be less than the above fair

market value which is based on guideline value prevailing in the year 2007-08.

Considering the above aspects of the above facts of the case, we are submitting following document as additional document as additional evidence under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 which are very relevant to this case.

1. Fresh valuation report of property given by approved valuer on 23.10.2019.
 2. Copy of order of Diversion order by Revenue Authority on 30.12.2008.
 3. Copy of Gift Deed through which the said property was received by the appellant.
 4. Copy of Judgments of Hon'ble Courts in respect of disputes involved in this case.”
6. Per contra Ld. Departmental Representative strongly opposed the application for admitting the additional evidence and vehemently argued supporting the order of both the lower authorities.
7. We have heard rival contentions and perused the records placed before us and also gone through the additional evidence filed by the assessee. The question in dispute before us is that whether the alleged land sold by the assessee during the year is an agriculture land or residential land and whether Ld. CIT(A) was

justified in confirming the addition for Long Term Capital Gain at Rs. 2,28,28,961/- .

8. Ld. Counsel for the assessee contended that the alleged land is an agriculture land. He took us to the original sale agreement deed dated 6.5.95 for sale of impugned land measuring 0.94 acre situated at Village Sirpur, District Indore. Since the terms of agreement were not fulfilled and the property could not be registered in the name of the buyer, second agreement was made on 23.11.2004 revising the sale consideration at Rs.17,51,000/- and again on 27.9.2007. Final sale deed was registered in favour of buyer M/s. Balaji India Infrastructure Pvt. Ltd for a sale consideration of Rs.17,51,000/-. In the additional evidence Ld. Counsel for the assessee has filed a copy of the order issued by the Revenue Authority on 30.12.2008 to support the contention that the alleged land was agriculture land on the date of transfer on 27.9.2007. Ld. Counsel for the assessee has also filed the Valuation Report issued by the approved Valuer on 23.10.2019 assessing the fair market value of the alleged agriculture land as on 27.9.2007 at Rs.26,08,600/-.

9. On the other hand both the lower authorities have adopted the fair market value of Rs. 2,50,82,000/- on the basis of value assessed by the Stamp Valuation Authority treating the land as residential plot of land. It is also brought to our notice that the alleged property under consideration was in dispute with the Municipal Corporation, Indore and various orders of the jurisdictional authorities at District Court are placed in the paper book as additional evidence.

10. In these given facts and circumstances of the case and looking to the fact that the assessee has treated the land as agriculture land whereas the revenue authorities are harping upon to treat it as residential plot of land, the issue needs fresh examination by the Ld. A.O and for doing so the additional evidence filed by the assessee seems to be relevant as they go to the root cause of the issue. We, thus admit the additional evidence and direct the Ld. A.O to examine the issue afresh in light of the additional evidence filed by the assessee and our discussions herein above and to decide the issue in accordance with the law after providing reasonable opportunity of being heard to the assessee. The assessee

is directed to comply to the notices of the Ld. A.O and should file all necessary documents as and when called for.

11. In the result the appeal of the assessee is allowed for statistical purpose.

The order pronounced in the open Court on 21.11.2019.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

दिनांक /Dated : 21 November, 2019

/Dev

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

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

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