

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB", BENCH AMRITSAR**

**BEFORE SHRI N.K. CHOUDHRY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA Nos.306/ASR/2014 & 591/ASR/2015**

**(निर्धारणवर्ष / Assessment Year: 2007-08)**

<b>Estate of Sh. Jagir Singh Bhullar Through S. Jasbir—Singh Bhullar, E-250 Ranjit Avenue, Amritsar, Punjab.</b>	<b>Vs.</b>	<b>Income Tax Officer, Ward-1(3), Tarn Taran, Punjab.</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFVPH 1546 N</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Sh. Padam Bahl, CA.  
Respondent by : Sh. Charan Dass , DR.

**सुनवाईकीतारीख/ Date of Hearing : 28/11/2019**

**घोषणाकीतारीख/Date of Pronouncement : 30/12/2019**

**आदेश / O R D E R**

**Per Dr. A.L. Saini:**

The captioned appeals filed by the Assessee and Revenue, pertaining to assessment year 2007-08, are directed against the separate orders passed by the Commissioner of Income Tax (Appeals), Amritsar in appeal no. 249/IT//10-11 and in appeal no. 161/2014-15, which in turn arise out of an assessment order and Penalty order passed by the Assessing Officer under section 143(3)/147 and under section 271(1) (c ), respectively, of the Income Tax Act, 1961 (in short the 'Act').

2. Since these two appeals relate to the same assessee and same assessment year, therefore these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. At the outset, we find that appeal of assessee is delayed by 460 days and Assessee has filed condonation petitions praying for condonation of delay. The Ld. DR for the Revenue opposed the prayer for condonation of delay and submitted that the appeal should be dismissed. The Id Counsel submitted that assessee`s advocate had been suffering illness (critical sickness) for a long period. Finally, the assessee`s advocate died. Therefore, delay occurred and the appeal could not file on time. The Ld Counsel produced before the Bench the medical certificate and death certificate of his advocate.

Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay and admit the appeal for adjudication.

4. First we shall take assessee`s appeal in ITA No. 306/ASR/2014, for A.Y.2007-08. The grounds of appeal raised by the assessee in ITA No. 306/ASR/2014 are as follows:

*“1. That the Assessment Order passed by Ld. Assessing Officer u/s. 143(3)/147 of the Income-tax Act, 1961, as well as the Appellant order passed by worthy CIT (A) are illegal, arbitrary and contrary to the facts on records and this illegality pervades over all other grounds of appeal.*

*2. That facts stated in the assessment order in my case which are not only incorrect but misleading in as much as there was neither original assessment for this assessment year nor any invocation of section 263 nor any order of Worthy CIT Amritsar u/s 263. If there was any such order it should have been referred to in the impugned assessment nor was there any legal need or sanction to set the proceedings u/s 147 into motion. Therefore, order passed suffers from incurable legal infirmity as regards facts and this ground of appeal has not been taken cognizance of this ground of appeal and no finding thereon has been recorded despite a remand report having been called from the concerned assessing officer.*

*3. That the Ld AO has seriously erred on facts and in law in framing assessment in the hands of the estate of Late Shri Jagir Singh whereas the segment of estate of Shri Jagir Singh which is subject matter of the impugned assessment order had already devolved on his three sons after his death on 12-04-2003 and this fact is duly recorded in the records of the Punjabi Coop Housing Society Ltd and the worthy CIT (A) has not recorded any finding there on this ground of appeal and which felt to be recorded by him because we had invoked section 168 of the Income Tax Act.*

*4. That the adjustable advance/earnest money was received by the heirs pro rata as per their devolved shares and not by estate of the deceased Shri Jagir Singh.*

*5. That as per facts on records there was no legal basis for framing assessment on the estate of S.Jagir Singh whereas the assessment qua this deal factually and legally stood to be made in hands of his three sons who acquired right in the impugned plot on its devolution on them and the worthy CIT (A) had failed to record a finding on this ground of appeal.*

6. Without prejudice to my contentions as above, the Ld AO is admitting in the assessment order that the owner of the entire land area of 21.2 acres of land is Punjabi Coop Housing Society Ltd and each member qua his land area shall be entitled to receive benefits in cash and kind on occasions as per agreement of the Society with the Developers and the worthy CIT (A) had failed to record any finding on this ground of appeal.

7. That Ld AO has erred on facts and in law to rope in receipt of adjustable advance/earnest money within the ambit of transfer as contemplated under section 53A of Transfer of Property Act.

8. That Ld AO has misapplied the facts and law in treating future and uncertain and unquantifiable benefits as so called consideration for alleged transfer and accordingly he has valued non existent property benefits for levy of capital gains.

9. That, the impugned agreement with the builders/ developers had been canceled by the society and the honorable Punjab & Haryana HC had granted a permanent injunction against the builders to carry out any kind of construction thereon from the date of the order of HC and the worthy CIT (A) has failed to adjudicate and record a finding on our arguments on this issue.

10. That the income assessed at Rs. 3,67,50,000 as capital gains stands to be deleted because the estate had no property after the death of Shri Jagir Singh.

11. That without prejudice to the above, similar assessment/reassessment proceedings have been initiated against the Punjabi Cooperative House Building Society Ltd for this assessment year. That similar proceedings to tax the similar income arising out of similar transaction tantamount to double taxation of the same income which is not legally permissible under the law.

12. That the appellant craves leave to add, amend or withdrawn any new ground or existing ground of appeal before or after the commencement of hearing of the appeal.”

5. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 11.09.2017, passed by the Division Bench of this Tribunal in on identical facts in the case of Shri Prem Singh Lalpura (deceased) through only local L/Hr. Mr. Daljit Singh (son) in ITA No.133/Asr/2015 for the Assessment Year 2007-08 whereby the issue relating to capital gain has been discussed in favour of assessee. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

6. Learned Departmental Representative did not have much to say but he nevertheless relied upon the orders of the authorities below.

7. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of Shri Prem Singh Lalpura (deceased) through only local L/Hr. Mr. Daljit Singh-son (supra)vide order dated 11.09.2017 In this order, the Tribunal has inter alia observed as follows:

*“This is an appeal filed by assessee against the order of Ld. CIT(A), Amritsar dated 07.11.2012 for Asst. Year: 2007-08.*

2. *The assessee has taken nine grounds of appeal but at the time of hearing the Ld. AR submitted that he will be pressing grounds no. 5 to 7 only and therefore ground no. 1 to 4 and 8 to 9 are dismissed as withdrawn. Ground no. 5 to 7 of the appeal are reproduced below:*

5. *The Ld. Assessing Officer has erred on facts and in law to rope in receipt of adjustable advance/earnest money and benefits in expectancy with in the ambit of transfer as contemplated u/s 53A of Transfer of Property Act.*

6. *That Ld. Assessing Officer has misapplied the facts and law in treating future and uncertain and unquantifiable benefits as so called consideration for alleged transfer and accordingly he has valued non existent property benefits for levy of capital gains.*

7. *That the income assessed at Rs.1,83,75000 as capital gain stands to be deleted because Ld. Assessing Officer has failed to discharge the sine qua non onus of proving the nexus of the receipt of the impugned amounts to any kind of transfer as contemplated u/s 2(47) of the Income Tax Act 1961.”*

3. *At the outset, the Ld. AR submitted that there is a delay of 775 days in filing of the appeal and the reason for delay in filing of the appeal was the continuous ill health of R.C. Khanna the counsel of the assessee. It was submitted that assessee was under bonafide belief that his appeal against CIT(A) order has been filed by his counsel but Ld. counsel could not file the appeal due to his bad health, Ld. AR submitted that an application for condonation of delay alongwith affidavit of the assessee was on record and it was prayed that in the interest of justice the delay in filing the appeal may be condoned. The Ld. DR had no objection to the condonation of delay and therefore the delay was condoned and Ld. AR was directed to proceed with his arguments.*

4. *The Ld. AR at the outset submitted that the case of the assessee was covered in favour of assessee by the order of Punjab & Haryana High Court in the case of C. S. Atwal and others Vs. CIT.*

5. *The Ld. DR fairly agreed that the matter was covered in favour of assessee.*

6. *We have heard the rival parties and have gone through the material placed on record. The brief facts of the case are that the assessee was a member of the Punjab Co-*

*Operative House Building Society Ltd. and as a member of the said Society; the assessee was having 500 sq. yards of plot in the land owned by the society. A Tripartite agreement dated 25.02.2007 was entered into between Punjab Co-Op Housing Development Company House Building Society Ltd. M/s HASH Builders (P) Ltd. Chandigarh and M/s Tata Housing Development Company for transfer of land of the society according to which each member of the society having plot of 500 sq. yards shall receive Rs.82,50,000/- as monetary consideration and one furnished flat measuring 2250 sq. ft. to be constructed by M/s Tata Housing Company Ltd. Mumbai, and the cost of which @ Rs.4500/- per sq. ft. was Rs.1,01,25,000/- and therefore, as per the above said tripartite agreement, the assessee was to receive total consideration of Rs.1,83,75,000/-. The assessee received a part payment of Rs.15,00,000/- on 24.02.2007 and another payment of Rs.18,00,000/- was received in April, 2007, but the agreement could not be completed and assessee did not receive balance payment along with the furnished flat. The assessee therefore, did not declare the capital gain on the sale of such plot as in his opinion no capital gain had accrued. However, the Assessing Officer calculated the capital gain on accrual basis and worked out the capital gain to the extent of Rs.1,83,75000/-.*

7. *On appeal before Ld. CIT(A), the assessee did not get any relief and therefore, the assessee filed the appeal before the Hon'ble Tribunal. We find that the case of the assessee is squarely covered by the order of the Punjab & Haryana High Court in the case of C. S. Atwal and Sons & Others. The findings of the Hon'ble Court are reproduced as herein below.*

- “1. *Perusal of the JDA dated 25.02.2007 read with sale deeds dated 02.03.2007 and 25.04.2007 in respect of 3.08 acres and 4.62 acres respectively would reveal that the parties had agreed for pro-rata transfer of land.*
2. *No. possession had been given by the transferor to the transferee of the entire land in part performance of JDA dated 25.02.2007 so as to fall within the domain of Section 53A of 1882 Act.*
3. *The possession delivered, if at all, was as a license for the development of the property and not in the capacity of a transferee.*
4. *Further Section 53A of 1882 Act, by incorporation, stood embodied in section 2(47)(v) of the Act and all the essential ingredients of Section 53A of 1882 Act were required to be fulfilled. In the absence of registration of JDA dated 25.02.2007 having been executed after 24.09.2001, the agreement does not fall under Section 53A of 1882 Act and consequently Section 2(47)(v) of the Act does not apply.*
5. *It was submitted by learned counsel for the assessee- appellant that whatever amount was received from the developer, capital gains tax has already been paid on that and sale deeds have also been executed. In view of cancellation of JDA dated 25.02.2007, no further amount has been received and no action thereon has been taken. It was urged that as and when any amount is received, capital gains tax shall be discharged thereon in accordance with law. In view of the aforesaid stand, while disposing of the appeals, we observe that the assessee appellants shall remain bound by their said stand.*
6. *The issue of eligibility to capital gains tax having been decided in favour of the assessee, the question of exemption under Section 54F of the Act would not survive any longer and has been rendered academic.*

7. *The Tribunal and the authorities below were not right in holding the assessee-appellant to be liable to capital gains tax in respect of remaining land measuring 13.5 acres for which no consideration had been received and which stood cancelled and incapable of performance at present due to various orders passed by the Supreme Court and the High Court in PILs. Therefore, the appeals are allowed. ”*

*In view of the above findings of Hon'ble Punjab & Haryana High Court, we find that the order of Ld. CIT(A) is not sustainable as the Hon'ble. Court has decided that under these circumstances the capital gain has to be restricted to the proportionate amount of sale consideration received during the year and the rest of the capital gain will be taxable in the year in which rest of the consideration is received. Therefore the Assessing Officer is directed compute capital gains tax on the basis of actual receipts during the year.*

8. *In view of the above, the appeal filed by assessee is partly allowed.*

8. Therefore, we note that the capital gain has to be restricted to the proportionate amount of sale consideration received during the year and the rest of the capital gain will be taxable in the year in which rest of the consideration is received. Therefore, the Assessing Officer is directed to compute capital gains tax on the basis of actual receipts during the year, as mentioned in the covered case (supra).As the issue is squarely covered in favour of the assessee by the decision of the coordinate bench, in the case of Shri Prem Singh Lalpura (deceased) through only local L/Hr. Mr. Daljit Singh-son (supra), and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Division Bench (supra). We find no reason to interfere in the said order of the Division Bench, therefore, respectfully following the judgment of the Coordinate Bench (supra), the appeal filed by assessee is partly allowed.

9. In the result, the appeals of the assessee is partly allowed.

10. Now we shall take Revenue`s appeal in ITA No. 591/ASR/2015, for A.Y.2007-08. The ld CIT(A) deleted the penalty under section 271(1) (c ) of the Act in the case of the assessee under consideration for A.Y.2007-08 therefore, the Revenue is in appeal before us. We note that when quantum is deleted or dispute in respect of

quantum has been decided in favour of assessee then penalty under section 271(1) (c) of the Act does not survive. When the assessee furnishes accurate particulars of income and does not conceal particulars of income in that situation also the penalty should not be levied. The Id CIT(A) deleted the penalty u/s 271(1) (c) of the Act taking into account all the material available before him, as noted above, therefore we do not find any infirmity in the order passed by the Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the penalty, his order on this issue is therefore upheld and the grounds of appeal of the Revenue are dismissed.

11. In the result, appeal of the assessee is partly allowed and appeal filed by the Revenue is dismissed.

**Order pronounced in the Court on 30.12.2019**

**Sd/-**

**(N.K. CHOUDHRY)**

**न्यायिकसदस्य / JUDICIAL MEMBER**

**Amritsar** Amritsar

**दिनांक/** Date: 30/12/2019

**(BCG, PS)**

**Sd/-**

**(A.L.SAINI)**

**लेखासदस्य / ACCOUNTANT MEMBER**

Copy of the order forwarded to:

1. Estate of Sh. Jagir Singh Bhullar, Through S. Jasbir—Singh Bhullar, E-250 Ranjit Avenue, Amritsar, Punjab.
2. Income Tax Officer, Ward-1(3), Tarn Taran, Punjab.
3. C.I.T(A), Amritsar
4. C.I.T(A)-1, Amritsar.
5. C.I.T.- concerned.
6. The Sr. DR, I.T.A.T., Amritsar.

True copy

By Order

**Assistant Registrar  
ITAT, Amritsar Bench**