

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 32/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Smt. Sunita Yadav 11, Vivek Vihar, Shyam Dungari, Naradpura Road, Amer, Jaipur	बनाम Vs.	The ITO Ward 7(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACAPY0830C		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Miss. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 02/01/2020
उदघोषणा की तारीख / Date of Pronouncement: 06/01/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 19.12.2018 wherein the assessee has taken the following grounds of appeal:-

"1. Under the facts and circumstances of the case the learned CIT(A) has erred in passing the ex-parte order by not giving the sufficient opportunity to the assessee of being heard as no notice of hearing was served to the assessee.

2. Under the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 33,45,010/- made by the learned AO u/s 56(2)(vii)(b)(ii) of the Income Tax Act, 1961."

2. During the course of hearing, the Id. AR drawn our reference to the relevant facts and findings of the Assessing officer at Para 2.1 of the assessment order which reads as under:-

"2.1. Income u/s 56(2)(vii)(b)(ii) of the I.T.Act, 1961 — As per the information in this case during the year under consideration the assessee has purchased agriculture land situated at Amer town, Jaipur for a consideration of Rs.17,00,000/- vide registered sale deed dated 29.10.2013. However, the registering authority had adopted the sale value of which at Rs.50,45,010/- for the purpose of stamp duty. Thus, the stamp duty value adopted by the sub register is exceeding by Rs.33,45,010/- which is more than fifty thousand rupees than the purchase value. Therefore, as per the provisions of section 56(2)(vii)(b)(ii) of the I.T. Act, 1961 the excess amount of Rs. 33,45,010/- is chargeable to be income-tax under the head "income from other sources". However, the assessee has failed to declare such income in her return of income for the year under consideration. Looking to the above discrepancies, the assessee, vide note sheet entry dated 19.07.2016 was required to explain as to why the excess amount of Rs.33,45,010/- may not be added to her total income. In response to the above, the assessee vide her written submission dated 04.11.2016 has stated as under:-

" In the above reference I beg to state that I purchase an agricultural land on dt.29.10.2013 of Rs.17,00,000/-. The above agricultural land is situated in deeply area and approach to reach the land is very typical and above land is disputed and the land is uneven and no any person was agree to purchase the above land and the market rate of above land was not more than Rs.17,00,000/- the seller is liable for tax on difference of market value and stamped duty value of Rs.50,45,010/- .

It is therefore most respectfully prayed you to adopt the value Rs. 17,00,000/- of the above land and oblige"

The submission made by the assessee has been considered but the same is not found to be acceptable. As per the sale deed dated.29.10.2013, the sub-registerar-III, Jaipur has adopted the sale value of the property for the purpose of stamp duty at Rs. 50,45,010/- as against the sale consideration of Rs.17,00,000/-, therefore, the provision of section 56(2)(vii)(b)(ii) of the I.T. Act, 1961 are clearly applicable in the assessee case. As per the provisions of section 56(2)(vii)(b)(ii) of the I.T.Act, 1961 the assessee is liable to be charge income tax on the amount exceeds to the sale consideration as compared to the stamp duty value. However, the assessee has not declared the exceed amount in her return of income. In the circumstances, the excess value of Rs.33,45,010/- is treated as undisclosed income of the assessee and accordingly, the same is hereby added to the total income of the assessee under the head 'income from other sources.

From the above it is evident that the assessee has concealed the particulars of her income/furnished inaccurate particulars of her income before the revenue. Therefore, it is a fit case for initiation of penalty proceeding of u/s 271 (1)(c) of the I.T.Act, 1961."

3. It was submitted by the Id AR that the assessee has objected to the valuation adopted by the stamp duty authority before the AO and therefore, the matter should have been referred by the AO to the DVO for determination of fair market value. Since the Assessing Officer has not referred the matter to the DVO, the matter may be set aside to the file of the Assessing Officer for determination of fair market value.

4. Per contra, the Id. DR relied on the findings of the Assessing Officer and submitted that the assessee has not made any specific request for reference of the matter to the DVO. Therefore, in absence thereof, the Assessing Officer

was not required to refer the matter to the DVO. She accordingly supported the findings of the Assessing Officer.

5. We have heard the rival contentions and perused the material available on record. The assessee has purchased agriculture land for a consideration of Rs. 17,00,000/- whereas the registering authority has considered the sale value at Rs. 50,45,010/- for the purpose of stamp duty. During the course of assessment proceedings, the assessee was issued a show cause notice and in response, the assessee objected to the stamp duty valuation of Rs. 50,45,010/- and requested to adopt value of Rs. 17,00,000/- as per the sale deed dated 29.10.2013. Therefore, where the assessee has objected to the stamp duty violation, as per the provisions of section 50C(2) of the Act which are equally relevant for the purpose of provisions of section 56(2)(vii)(b)(ii) of the Act, the matter should have been referred by the Assessing Officer to the DVO for determination of fair market value. In the instant case, as the matter has not been referred to the DVO, we deem it appropriate to set aside the matter to file of the Assessing Officer for referring to DVO to determine the fair market value of the property in question and decided as per law.

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

Order pronounced in the open Court on 06/01/2020.

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

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/01/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Smt. Sunita Yadav, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(4), Jaipur
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. 32/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

