

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI SANJAY ARORA, ACCOUNTANT MEMBER**

ITA No.65/JAB/2012  
Assessment Year: 2005-06

Uma Prakash Singh, Vill. & PO Chorhata – Rewa (M.P.) [PAN: AOPPS 0999R]	vs.	Income Tax Officer, Ward 1, Rewa
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri I.B. Khandel, Sr. DR
Date of hearing	09/12/2019
Date of pronouncement	20/01/2020

**ORDER**

Per Sanjay Arora, A.M.

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-II, Jabalpur ('CIT(A)' for short) dated 08.02.2012, partly allowing the assessee's appeal contesting his assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 11.9.2008 for the Assessment Year (AY) 2005-06.

2. None appeared for and on behalf of the assessee when the appeal was called out for hearing, nor is there any adjournment application on record. The instant appeal is outstanding for disposal since 06.8.2012, having come up for hearing, beginning 19.9.2013, numerous times. Even in the last few years, the hearing was adjourned at the assessee's request on several occasions, viz. on

13.6.2016, 31.10.2016, 17.11.2017, 12.3.2018, and 11.4.2019. Accordingly, it was decided to dispose the same on merits on the basis of material on record after hearing the party before us.

3. The appeal raises the following grounds:

1. That the Id. CIT(A) was unjustified in rejecting the claim of appellant as on 1.4.1981 rate applied for land situated on NATIONAL HIGHWAY CHORAHATA REWA ((M.P.) was quite reasonable while case reported by the 'Ld. A.O. Rewa (M.P.) that land situated in very inner side of that area, depend on imagination & arbitrary. Ld. authorized valuer report is arbitrary.
2. That Id. A.O. & Id. CIT(A) both unjustified & erred in not allowing of registry file for rate purpose of Tumus Factory situated in front of appellant land and Mr. Rambihari Shukla land situated in the same ward of the appellant.
3. That Id. CIT(A) and Id. A.O. unjustified in not allowing of investment in construction of house of Rs.2918832 (Twenty nine lacs eighteen thousand eight hundred & thirty two only) while appellant filed bank statement withdrawal for house construction mention name of building material party on which material purchase for construction of house payment was made through Cheque.
4. That Id. CIT (A) was unjustified is not allowing of Brokerage of Rs. 50000/- while appellant spent Rs. 1 lac for purchase of Land.

4. The facts in relation to Ground Nos. 1 and 2 are that the assessee, an individual, filed his return of income on 23.11.2007 declaring nil taxable income and agricultural income at Rs.95,000/-. No capital gain was offered on the sale of 7.09 acres of land at Village Chorahata during the year (i.e., on 28.01.2005 and 31.01.2005) for Rs. 74,73,500/-. This was explained in the assessment proceedings to be as the land sold was an agricultural land. The Assessing Officer (AO), however, proceeded to determine the capital gains on the said transfer inasmuch as Chorahata came within the local limits of Nagar Nigam (Municipality) vide Notification dated 06.9.2003, so that the subject land was a capital asset u/s. 2(14)(iii) of the Act. The AO sought stamp valuation from the Office of the Sub-Registrar, Rewa. The same was with a

view to ascertain the fair market value of the subject land as on 01.4.1981, i.e., by using the stamp value as a surrogate measure therefor. The said value was, however, not available, having commenced only in 1984-85. The information received from the said Office, though, stated the rate of Rs.9500/- per acre. The appellant relied on various sale deeds for the purpose, listed as under, further contending that the cost of the land in the area increased substantially during the year 1981-82 due to industrialization (refer para 3/pg. 4 of the impugned order):

<u>S.No.</u>	<u>Name</u>	<u>Rate/per acre</u>	<u>Date</u>
1.	Uday Raj	12571/-	16.02.1982
2.	Ram Niwas	12994/-	16.02.1981
3.	Ram Krishna Prasad	20454/-	27.08.1981
4.	Ken Electricals Ltd.	3741/-	06.03.1980
5.	Vir Bahadur	8000/-	31.10.1977

The AO, accordingly, applied a rate of Rs. 30,000 per acre (as on 01.4.1981), which was then subject to cost inflation index, i.e., as against the rate of Rs. 1,35,000/- per acre proposed by the assessee before him, which was found not acceptable as the same related to developed land in middle of the town, Rewa. Further, the fantastic rate of Rs.12 sq. ft., also cited before him, was for January, 2005 and, thus, not relevant. The Id. CIT(A), in appeal, adopted the rate of Rs.41,385/- per acre, i.e., as per the report of the DVO, Jabalpur, to whom the matter was referred to by the AO during the assessment proceedings.

5.1 The assessee assails the adopted rate as arbitrary and, further, also on the basis that the land/s which is the subject matter of transfer in the case of *Ram Bihbari Shukla* and *Tumus Factory* is more comparable. The least therefore that the assessee ought to have done was to place on record the

map/s of the land under reference, as well as; and rather, also of the lands for which registration rate stands cited by the Revenue, stating of having been relied upon by the assessee himself. This would enable one to ascertain the comparability of the said lands with reference to the subject land. This is particularly so as the AO has, as noted by the Id. CIT(A) at page 5 of his order, clearly stated that the assessee's land is situate faraway from NH 7, Rewa. Further, as also observed by the Id. CIT(A), the AO has not gone by the sale deed rates, but applied a rate far in excess, at Rs.30,000/- per acre, which was further improved upon in the DVO's report dated 18.01.2012, revising his original estimate of Rs.15,976/- per acre, with the later one having been adopted by the Id. CIT(A).

5.2 In our clear view, the DVO's report would be by itself of little consequence. This is as it is not possible for one to, in 2012, determine the fair market value of a property in 1981; the land value fluctuating significantly over time on account of locational factors; the demographic and the user profile of the land over which would have witnessed, and definitely so, given the spread of industrialization across the country in the last few decades, even as argued by the assessee himself, a sea change. The reliance on the DVO's report would accordingly be relevant only to the extent it is based on the actual sale deed rates, providing locational comparability of the subject land with reference to those for which the rates are being relied upon.

5.3 Coming to the evidences being relied upon by the assessee, as afore-noted, there is nothing on record to demonstrate the said comparability. The sale deed in the case of *Ram Bihari Shukla* has been regarded as not comparable, being in respect of a developed land situate in the middle of the town Rewa. This has not been rebutted by the assessee, much less with any material, so that his reliance on the said sale instance dated 23.11.1981 fails.

The second evidence is in respect of a mortgage deed dated 29.7.1981 in respect of *Tumus Factory*, Village Chorahata, Tehsil Husur, District Rewa. The copy of the same is placed on record (PB pages 2-38). Though its locational comparability is not evidenced, the assessee states the said land as situate right in front of (i.e., opposite to) his land, which 'fact' has not been denied by the Revenue, with rather the orders by both the Revenue authorities being without reference to this piece of evidence, which is contemporaneous, being separated from the reference date (01/4/1981) by only a few months. The assessee, on that basis, claims to have substantiated the land value at Rs.8,72,209/- per acre (reckoning the mortgage to be only for 3.43 acres of land only). We are not impressed by this figure, arrived at by reckoning the land mortgaged at 3.44 acres, which appears to be at 8.89 acres (refer Schedule-1 to the mortgaged deed) and, besides, the mortgage value (i.e., Rs. 30 lacs) includes other assets as well (Sch. 2 to the deed). However, it does indicate that the land value could be higher than the adopted rate of Rs.41,535 per acre. The same is relevant in view of the close proximity, both location-wise and time-wise, to the assessee's land and, thus, would have a direct bearing on the value of the assessee's land as on April 1, 1981 inasmuch as the same is, as stated, right in front of the assessee's land.

5.4 In our view, the matter therefore requires being set aside to file of the ld. CIT(A) for consideration of the assessee's said evidence which, as it appears, has not been considered even in the DVO's report in-as-much as there is no reference thereto in the impugned order. We may clarify that we direct so as the matter, which is to be decided on the basis of material on record, is factually indeterminate; the order by the Revenue authorities being silent thereon, with the ld. Sr. DR also not throwing any light in the matter. The locational comparability of the sale instances stated in the impugned

order, tabulated above, to be fair to the assessee, have also not been stated by the Revenue's authorities, who have in fact adopt a rate far in excess thereof, itself indicating non-reliance on the said sale instances. That apart, the land size is also relevant, and which has not been stated for any of these sale deeds, not on record, to be considered as relevant. Also, we are conscious that the stamp value may not necessarily be the fair market value; the tendency of saving on stamp duty and tax by the parties to the transfer resulting in the under-reporting of the transfer consideration. This is particularly so where stamp valuation regime is absent, having come into place only in 1984-85. The Id. CIT(A) shall in the set aside proceedings provide opportunity both to the assessee as well as the DVO, to whom the matter stands referred to by the AO, to state their respective cases *qua* these evidences as well as in respect of *Tumus Factory*, and adjudicate per a speaking order. The onus to substantiate the land value assumed – also requiring substantiation of the value of the other assets mortgaged along with, as well as the locational comparability of the land mortgaged, in the case of *Tumus Factory*, would be solely on the assessee, and subject to verification by the Revenue. We, though normally loath to remit matters pending for years, back again, are afraid that this is the only course open in-as-much as there is no whisper of this *Tumus Factory* land in their orders by the Revenue authorities. We decide accordingly.

6. Ground No.3 disputes the part disallowance of deduction u/s. 54F, claimed at Rs.29,18,832/- toward a residential house constructed by the assessee utilizing the sale proceeds of the transfer under reference. The DVO reported the assessee to have built two structures, i.e., a residential house and a commercial block, which he valued at Rs.15,00,500/- and Rs.13,98,200/- respectively, i.e., at a total Rs.28,98,700/-. The assessee objecting to the second structure being a commercial block, the AO caused physical inspection

thereof through his Inspector, reporting to the Id. CIT(A) vide his letter dated 27.01.2012. The second structure, which was stated to be five shops, were not rented out or otherwise used for any commercial purpose, but for storage of fertilizers, crops, etc. The Id. CIT(A), considering the same, which was not disputed, directed for allowance of deduction in the sum of Rs.22,00,500/-, i.e., Rs.15 lacs for the residential house and Rs.7 lacs (being 50% of the second block of about Rs.14.00 lacs), regarding thus the same as a user to the said extent for residential purposes. Further, the assessee, who had admittedly not kept any record of the investment in buildings, claiming the entire bank withdrawal of Rs.26.53 lacs as for investment in building, could not be allowed deduction towards claimed self-supervision charges, being a notional cost. Aggrieved, the assessee is in second appeal.

7. The assessee himself claims to have made an investment of Rs.26.53 lacs. The Revenue, therefore, in allowing his claim u/s. 54F at Rs. 22.005 lacs, has acted very fairly, both in terms of the quantum of investment as well as by regarding the part user of shops, stated to be for storage of agricultural inputs/produce, as toward residential purposes and, further, reckoning the total investment at Rs.29.19 lacs, i.e., in excess of the withdrawal by the assessee at Rs.26.53 lacs. No interference at our end, accordingly, is called for. We decide accordingly.

8. Before parting, we may mention that an adjournment application, placed on the file, was received subsequent to the close of the hearing. The same could not therefore be accorded consideration, even as the decision to proceed to decide this appeal on merits was guided by, apart from the absence of any such application, the consideration to adjudicate a matter pending since years, over which the hearing had been adjourned several times at the instance of the assessee.

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

*Order pronounced on January 20, 2020*

Sd/-  
(Bhavnesb Saini)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 20/01/2020

Aks

Copy of the order forwarded to :

1. The Appellant: Uma Prakash Singh, Vill. & PO Chorhata, Rewa (M.P.)
2. The Respondent: Income Tax Officer, Ward 1, Rewa
3. The CIT concerned
4. The CIT(A)-II, Jabalpur
5. The Sr. D.R., I.T.A.T.