

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 1085/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Shyam Kumar Jain 169/421, Heera Path, Mansarovar, Jaipur.	बनाम Vs.	The ITO Ward-2(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AECPJ 7090 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri B.M. Dasot (C.A.)
राजस्व की ओर से / Revenue by : Smt. Roonipal (JCIT)

सुनवाई की तारीख / Date of Hearing : 05/02/2020
उदघोषणा की तारीख / Date of Pronouncement: 07/02/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 30.09.2016 of the Id. CIT(A)-I, Jaipur for the assessment year 2010-11.

The assessee has raised following grounds:-

"1. Under the facts and circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals)I Jaipur has erred in confirming the sale consideration of the immovable property taken by the Assessing Officer Ward 2(5) for computation of long

term capital gain at Rs. 26848688.00 under section 50C as against actual sale consideration received amount to Rs. 91,00,000.00 while making assessment under section 143(3) on the basis of notice issued under section 147 and 148.

2. The Id. Commissioner of Income Tax (Appeals)I Jaipur has arbitrary and contrary to the facts erred in confirming the finding giving by the Assessing Officer Ward 2(5) that benefit of appeal filed by the purchaser and proceeding pending before the Rajasthan Tax Board against the revaluation order of Addition Commission (Stamp) cannot be given as the assessee is not party to the proceeding before Tax Board in the matter of revaluation for stamp duty purpose.

3. The Id. Commissioner of Income Tax (Appeals)I Jaipur has arbitrary and contrary to the facts erred in confirming the finding giving by the Assessing Officer Ward 2(5) for rejection of indexed cost given by the assessee and not judiciously determining the indexed cost of the property for purpose of calculating long term capital gain.

4. The proceeding initiated under section 147 and 148 are bad in law.

5. Under the facts and circumstances of the case and in law, the Id. Commissioner of Income Tax, Circle-6, Jaipur has erred in initiating penalty proceeding u/s 271(1)(c) of the Act.

6. The appellant craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing."

2. Ground Nos. 1 and 2 are regarding addition made by the AO of long term capital gain by adopting deemed full value consideration U/s 50C of the IT Act. The assessee is an individual and during the year

under consideration sold immovable property situated at A-1-B Sawai Jai Singh Highway, Banipark, Jaipur for a consideration of Rs. 91,00,000/- vide sale dated 19.08.2009. During the course of assessment proceedings, the AO noted that the Additional Commissioner (Stamp) enhanced the value of the property for the purpose of stamp duty at Rs. 2,68,48,688/-. The AO accordingly, proposed to adopt full value consideration by invoking the provisions of Section 50C of the Act and consequently the addition on account of long term capital gain was made by the AO by taking deemed full value consideration as determined by the Additional Commissioner (Stamp). The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before us, the Id. AR of the assessee has pointed out that the property in question was a residential property however, after the sale deed the Additional Commissioner (Stamp) enhanced the valuation by considering the said property as commercial one therefore, enhancement was made by treating the property as commercial one as against residential. The purchaser challenged the order of the Additional Commissioner (Stamp) enhancing the value for stamp duty purpose

purpose before the Rajasthan Tax Board and vide order dated 07.03.2018 the Rajasthan Tax Board has set aside the order of the Additional Commissioner (Stamp) and held that the property remains as residential one when there is no change of land use from residential to commercial. He has filed a copy of the order dated 07.03.2018 passed by the Rajasthan Tax Board and submitted that the original sale consideration as well as stamp duty valuation has been restored by the Rajasthan Tax Board. Thus the Id. AR has submitted that the addition made by the AO and sustained by the Id. CIT(A) is liable to be deleted.

4. On the other hand, the Id. AR has submitted that this order was not available either the AO or before the Id. CIT(A), therefore, the AO was justified in making the addition as per provisions of Section 50C of the Act.

5. Having considered the rival submissions as well as material available on record we note that the Assessing Officer has made the addition of long term capital gain by invoking the provisions of Section 50C of the Act and took the deemed full valuation consideration as enhanced value of property for stamp purpose by Additional Commissioner (Stamp). The order of the Additional Commissioner

(Stamp) dated 09.10.2013 was challenged before the Rajasthan Tax Board and vide order dated 07.03.2018. The Rajasthan Tax Board set aside the order of the Additional Commissioner (Stamp). It was also held that the property in question was residential property and remained as a residential one when there was not change of use from residential to commercial. Once the enhanced the value of the property for stamp duty purpose has been set aside by the Rajasthan Tax Board then addition made by the AO based on the said enhanced value would not survive. Accordingly, in the facts and circumstances of the case when the sale consideration declared by the assessee is finally accepted as stamp duty valuation then no addition is called. Accordingly, the addition made by the AO U/s 50C of the Act is deleted.

6. Regarding ground No. 3 the rejection of indexed cost of improvement. The assessee claimed that he has incurred an amount of Rs. 4,04,718/- for renovation of the property in question for the F.Y. 1983-84 however, no supporting evidence was filed by the assessee before the AO. Before the Id. CIT(A), the assessee produce confirmation from the contractor regarding the work carried out at the property of

the assessee. The Id. CIT(A) rejected the said additional evidence sought to be filed by the assessee.

7. Before us, the Id. AR has submitted that the assessee has filed the additional evidence before the Id. CIT(A) but the same was rejected on the ground that there were discrepancy in the details given in the said confirmation. The Id. AR has submitted that the area mentioned in the confirmation is inadvertent stated as square meter instead of square feet thus due to this mistake in the said confirmation it cannot be rejected. Thus the Id. AR has submitted that the said additional evidence may be considered and the indexed cost of improvement may be allowed while computing the long term capital gain.

8. On the other hand, the Id. DR has submitted that the assessee has filed a valuation report wherein the valuer has estimated fair market value of land as well as cost of constructed area as on 01.04.1981 which was accepted by the AO. In the absence of any evidence or any valuation determined by the valuer the claim of the assessee is devoid any substance. She has relied upon the order of the authorities below.

9. We have considered the rival submissions as well as relevant material on record. Though the assessee has claimed the cost of improvement/renovation of the property at Rs. 4,04,718/- however, no evidence was produce by the assessee before the AO. Before the Id. CIT(A), the assessee sought to produce the additional evidence in the shape of confirmation from the contractor stated to have carried out the work. The Id. CIT(A) has considered the additional evidence sought to be filed by the assessee in para 3.3.1 (iii)(iv) as under:-

"(iii) During the appellate proceedings, the appellant has not submitted any reason why the above additional evidence was not filed before the AO at the time of assessment proceedings and thus the same cannot be admitted as additional evidence under Rule 46A of the I.T. Rules. It is to be noted from the above document that total of 3679.25 square meter was constructed by the said contractor on account of rooms, corridors etc. and the cost of construction was stated at Rs. 110/- per sq. mtr. and the total amount was stated at Rs. 4,04,718/-. However, it is noted from the valuation report of the Registered Valuer that the land on which the property was constructed was admeasuring only 341.80 Square Meters and the plinth area was 341.50 square meter. Further, for the cost of construction as on 01.04.1981, the valuer has taken the rate of Rs. 632/- per sq. mtr. I am not able to comprehend, how appellant can construct 3679 Square Meters on a plot of 341.50 square meters. Further, if the alleged construction was made in the year 1983-84 as claimed by the appellant, the appellant can get a valuation report from a

registered valuer for the same. As per the valuation report, some renovation was stated to be done in the year 1984 and not the construction as claimed by the appellant and the valuation was in respect of first floor of the property only and the valuer has taken the value of land in relation to first floor at Rs. 8,58,480/- being 70% of the value of land underneath the property under consideration. Further, during the appellate proceedings, the appellant was required to state whether any return of income was filed in order to ascertain whether the appellant had the capacity or the funds for the alleged construction as claimed and it was stated that the appellant had not filed any return of income for the relevant year. It appears that the appellant has not come forward with clean hand during the appellate proceedings.

(iv) Therefore, looking to the totality of facts and circumstances of the case and in view of the above discussion, it is held that the appellant failed to substantiate its claim that it incurred a sum of Rs. 4,04,718/- on account of construction in the immovable property under consideration during the FY 1983-84 and thus the AO was justified in disallowing claim of the appellant in respect of cost of improvement and consequently, the indexed cost of improvement.”

Thus the Id. CIT(A) has pointed out to various discrepancy in the additional evidence filed by the assessee regarding the covered area and the plinth area in the said additional evidence comparison to the same as per the valuation report. These facts as pointed out by the Id. CIT(A) are taken from the record and there is no dispute that in the

additional evidence in the shape of confirmation from the contractor the total area is mentioned as 3679.25 square meter whereas the plinth area as stated in the valuation report is 3679.25 square feet. Therefore, it appears that the figures were taken from the valuation report but instead of mentioning the area in square feet it is stated in square meter in the additional evidence. The cost of construction as on 01.04.1981 is applied by the valuer @ Rs. 632 per square meter, therefore, the rate given in the additional evidence is even more than cost of construction of the property. Hence, when the claim of improvement is more than the cost of construction of the said area then the addition evidence produced by the assessee is full of discrepancy and also not giving the true and correct basis does not inspire confidence. Accordingly, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue.

10. Ground No. 4, at the time of hearing, the learned counsel for the assessee has stated at bar that the assessee does not press ground no. 4 and the same may be dismissed as not pressed. The Id. DR has raised no objection if ground no. 4 of the assessee's appeal is dismissed as not

pressed. Accordingly the ground no. 4 of the assessee's appeal is dismissed being not pressed.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 07/02/2020.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 07/02/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Shyam Kumar Jain, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(5), 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. 1085/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar