

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH '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. 1261/JP/2018  
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Angoori Devi 10, Panchwati Colony, JDA Scheme Gurjar Ki Thadi, Jaipur	बनाम Vs.	The ITO Ward- 2(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: BDGPD 4832 D	
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Jain, Advocate &  
Shri Ashok Kumar Gupta, Advocate

राजस्व की ओर से / Revenue by : Shri K.C. Gupta, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 23/03/2020

घोषणा की तारीख / Date of Pronouncement : 06 /05/2020

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of Id.  
CIT(A) -1, Jaipur dated 12-09-2018 for the Assessment Year 2011-12.

The assessee has raised the following grounds.

“1. No Reopening is permissible where full disclosure has made:-

That the Id. AO has grossly erred both in law and facts where the assessee has already made a full and true disclosure of all the

relevant materials in the first instance when the original assessment was framed. Reasons for reopening fail to mention which material was failed to be disclosed by the assessee. It cannot be said that there was any failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment. There is no finding of concealed income. The reopening is based on valuation adopted for payment of stamp duty by the sub- registrar. (No evidentiary value)

2. Reopening by invoking Section 50C:-

(a) That on the facts and in the circumstances of the case, the proceeding initiated u/s 148 of the income Tax Act, 1961 is void ab initio deserves to be quashed because the provision of section 50C are deeming provisions enacted specifically for the purpose of section 48. Therefore valuation adopted by the stamp valuation authority cannot by itself be made the basis of re-opening of assessment.

(b) That on the facts and in the circumstances of the case mere adoption of higher value of the property by the stamp valuation Authority cannot lead to a formation of belief of escapement of income, particularly when the value so adopted is adopted for stamp duty purposes only.

-ITO Vs SHIV SAKTI BUILD HOME (P) LTD. 61 DTR 37 JODHPUR  
-ARUN KUMAR CHOUDHARY Vs ITO Ward Tonk 56 Tax World 87  
-CIT Vs K.K. Enterprises 178 Taxman 187 (Raj.-HC)

3. Reasons not Provided:-

The Ld. Authorities below have grossly erred in law and facts in passing the assessment order u/s 148/143(3) without valid and proper service of reasons record u/s 148(2) on the appellant and therefore, such order is illegal and void ab initio.

-GNK Drivershafts (India) Ltd. vs. ITO 259 ITR 19 (SC)  
-CIT vs. Videsh Sanchar Nigam Ltd. 340 ITR 66 and  
-CIT vs. Trend Electronics (Bom.-HC)

4. Minus (-) points of Property:

Under the facts and circumstances of the case Ld. CIT (A) 1st, Jaipur, has not appreciated various attributes, charges, encumbrances, limitations and conditions, of the Plot under consideration. The plot was in possession of the tenant.

5. Sale Price Vs. 50C:  
Under the facts and circumstances of the case Ld. CIT (A) Ist, Jaipur, has erred in taking full value of consideration of Rs. 24,86,065/- as against Rs. 12,00,000/- received by the assessee in computing the Long Term Capital Gain on the sale of home/shop at Gangapur City by applying the provisions of section 50C.
6. Proper deduction not allowed:  
Under the facts and circumstances of the case Ld. CIT(A) Ist, Jaipur, has erred in taking the cost of construction in F.Y. 1984-85 at Rs. 36,560/- instead of Rs. 1,01,310/- and cost of construction in F.Y. 2002-03 at Rs. 70,265/- instead of Rs. 1,60,840/- on computing the indexed cost of improvement for the purpose of arriving at the amount of Long Term Capital Gain on sale of house/shop at Gangapur City.’’

2.1 The assessee is an individual and filed her return of income on 10-10-2011 declaring total income at Rs. 2,38,130/- including Long Term Capital Gain of Rs. 2,35,744/-. Subsequently, the AO reopened the assessment by issuing notice u/s 148 of the Act on 17-10-2013 on the ground that the assessee had disclosed sale consideration of property at Gangapurcity at Rs. 12.00 lacs whereas the value adopted by the stamp duty authority is at Rs. 24,86,065/-. Therefore, the AO was of the view that as per provisions of Section 50C of the Act, the sale consideration was to be taken at Rs. 24,86,065/- instead of Rs. 12.00 lacs. Thus the AO reopened the assessment and assessed the income on account of Long Term Capital Gain u/s 50C of the Act. The AO while passing the assessment order u/s 148 r.w.s. 143(3) of the Act on 22-08-2014 had

adopted the full value consideration at Rs. 24,86,065/- u/s 50C of the Act and consequently assessed the Long Term Capital Gain at Rs. 20,49,864/- as against declared by the assessee at Rs. 2,35,744/-. The assessee challenged the action of the AO before the Id. CIT(A) and contended that despite the objections raised by the assessee against adopting the deemed full value consideration u/s 50C of the Act, the AO has not referred the matter to the DVO for determination of fair market value of the property in question. The Id. CIT(A) has referred the valuation to the DVO who has determined the fair market value of the property at Rs. 20,59,400/-. Accordingly, the Id. CIT(A) has sustained the addition by accepting the full value consideration as determined by the DVO.

2.2 Before us, the Id.AR of the assessee has submitted that the property in question comprises of shops at ground floor and residential house at first floor. The Id.AR of the assessee further submitted that only one small shop is facing the road side and other shops are at the back side of the property whereas the DVO has applied the DLC rate as applicable for commercial property. The Id.AR of the assessee further contended that even as per sale deed the facts regarding property occupied by various tenants and disputes between the assessee and the tenants are pending in

the Court, is duly mentioned therein and therefore, the property in question is attached with various deficiencies. The Id.AR of the assessee further pointed out that this is a distressed sale due to the fact that entire property is occupied by the tenants and disputes for getting the property vacated from the tenants are pending in the Court. Therefore, the fair market value of the property cannot be adopted as per DLC rate which are applied by stamp duty authority as well as DVO. The DVO though accepted the sale in question as distressed sale but allowed only 15% discount from the DLC rate while determining the fair market value of the property in question. The Id.AR of the assessee further submitted that the DVO has also not properly valued the cost of construction of the property in question. Hence, the Id.AR of the assessee contended that if all these factors are taken into consideration then the fair market value of the property cannot be more than the actual sale consideration of Rs. 12.00 lacs as declared by the assessee and also mentioned the same in the sale deed. The Id.AR of the assessee relied on various decisions in support of his contentions as under:-

1. Shri Narayan M More vs ITO (ITA No. 959 to 964/Bang/2014 dated 31-08-2016 – ITAT Bangalore Bench).

2. CIT vs M/s. KK. Enterprises, Udaipur (ITA No. 37 of 2006 dated 18-08-2008 of – Rajasthan High Court, Jodhpur)
3. Shri Arun Kumar Choudhary vs ITO (ITA No. 268/JP/2015 dated 08-09-2016 – ITAT Jaipur Bench)
4. ITO vs Shiv Shakti Build Home (P) Ltd. (ITA No. 157/Jd/2009 dated 11-02-2011 – ITAT Jodhpur Bench)
5. Shri Manoj Dubey vs ITO (ITA No.294/JP/2016 dated 09-06-2017 – ITAT Jaipur Bench)
6. ACIT vs Royal Stiches Pvt. Ltd. (ITA No. 977/MDS/2009 dated 30-03-2010 – ITAT Chennai Bench)

The Id.AR of the assessee further pointed out that prior to issue of notice u/s 148 of the Act, the AO issued notice on 29-08-2013 u/s 133 (6) of the Act to the assessee calling for information regarding the property in question and in response to the said notice the assessee vide its reply dated 26-09-2013 has specifically pointed out that the property in question was let out since the year 1995 and the tenant has already filed a suit against the assessee when the assessee wanted to vacate the property from the tenant. Therefore, when the entire property is occupied by the tenants as pointed out by the assessee during the enquiry conducted by the AO then adopting the DLC rate is not justified.

2.3 On the other hand, the ld. DR has submitted that though the AO has not referred the matter for valuation to the DVO, however, the AO ld. CIT(A) has referred the same to the DVO and after the report of the DVO, full consideration was adopted as determined by the DVO. Therefore, the grievance of the assessee is that the AO has not referred the matter to the DVO but the same has been redressed by the ld. CIT(A). The ld. DR relied on the orders of the authorities below.

2.4 We have considered the rival submissions as well as relevant materials available on record. The ld. CIT(A) has sustained the addition made by the AO to the extent of Rs.20,59,400/- as full value consideration being determined by the DVO as against Rs. 24,86,065/- adopted by the AO. At the outset, we note that the DVO has determined the fair market value by considering the DLC Rates for commercial property in the year which was also adopted by the stamp duty authority. The DVO has then given the discount/ rebate of 15% due to distressed sale of the property. It is pertinent to note that DVO has not cited any comparable sale instances or reasons for giving rebate of 15% as to how the value of the property is reduced only to 15% by the reasons that the property is occupied by the tenants and dispute is pending in the Court.

We further note that the sale deed itself manifests the status of the property in question and it is explained in the sale deed that without any ambiguity at the ground floor there are 05 shops and at first floor there is a residential house. All the 05 shops as well as residential house are occupied by the tenants at a rate of Rs. 1210/- per month and Rs. 2200/- per month respectively. Thus the entire rent of the property is only Rs. 3410/-. Considering the status of the property being occupied by the tenants and tenants have already approached the Court for getting the interim stay against dispossession from the property by the assessee, it is clear from the facts and circumstances of the case that the property will not fetch a good price unless vacant possession is handed over to the buyer. Therefore, the assessee has brought on record the material which distinguishes the case from the normal transfer as property was occupied by the tenants at a meager rent and also dispute is pending in the Court. Certainly adverse factors affect the fair market value and no buyer would like to purchase the property if the vacant and undisputed possession is not handed over to him at the time of transfer. Therefore, having regard to the facts of the case when the property is attached with various factors adversely affecting the value/ price of the property, the fair market value

determined by the DVO by adopting the DLC Rates and giving only 15% discount on account of distressed sale is not justified. The DVO has not cited any comparable instances of a similarly situated property occupied by the tenants. It is undisputed fact that the assessee cannot fetch a prevailing market price which is in the area. Accordingly, in the facts and circumstances of the case, we find that sale consideration as agreed between the parties and reflected in the sale deed is representing correct fair market price of the property in question. Hence, the addition made by the AO and sustained by the Id. CIT(A) on this account is deleted.

3.1 The next issue is regarding deduction on account of cost of acquisition as well cost of construction was denied by the AO and by the Id. CIT(A).

3.2 The assessee claimed cost of construction of Rs. 1,01,310/- in the financial year 1984-85 as well as cost of construction in the financial year 2002-03 at Rs. 1,60,840/-. The AO while computing the capital gains has adopted the cost of construction for the financial year 1984-85 at Rs. 35,560/- and for the financial year 2002-03 at Rs. 70,265/-.

3.3 The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3.4 We have considered the rival submissions as well as relevant materials available on record. The Id. CIT(A) rejected the claim of the assessee on the ground that the assessee has not filed any evidence to substantiate her claim that ground floor of the property was constructed in the year 1984-85. Further the value of the property as determined by the DVO as on 9-04-2010 was compared by the Id. CIT(A) with the cost of construction claimed by the assessee and held that cost of construction as claimed by the assessee is very high as against the estimation made by the DVO. At outset, we note that AO as well as the DVO has accepted the construction of the ground floor in the financial year 1984-85 and first floor in financial year 2002-03. Therefore, there is no basis for doubting the year of construction as claimed by the assessee. Further the assessee has claimed the cost of construction in the respective financial years at Rs. 1,01,130/- and 1,60,840/- respectively and indexed cost of the same at Rs. 5,76,251/- and Rs. 2,55,833, total amounting to Rs. 8,32,084/-. The AO on the other hand estimated the cost of construction at Rs. 35,560/- and Rs. 70,265/- and indexed cost of Rs.2,02,265/- and Rs. 1,01,764/- total amounting to Rs. 3,04,029/-. Having regard to the facts of the case, we are of the considered view that average indexed cost taken by the

assessee as well as by the AO would be a just and reasonable amount of cost of construction. Accordingly, the average of two amounts comes to Rs. 5,68,056/- and the same shall be allowed as deduction on account of indexed cost of construction. The AO is directed to recompute the Long Term Capital Gain by considering the indexed cost of construction as indicated above.

4.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 06 /05/2020.

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:- 06/05/ 2020

\*Mishra

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

1.अपीलार्थी / The Appellant- Smt. Angoori Devi, , Jaipur

2.प्रत्यर्थी / The Respondent- The ITO, Ward- 2(4), Jaipur

3.आयकर आयुक्त(अपील ) / CIT(A),

4.आयकर आयुक्त / CIT,

5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6.गार्ड फाईल / Guard File (ITA No1261/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar