

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1393/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16

Shri Om Prakash Agarwal B-296, Hari Marg, Malviya Nagar, Jaipur	बनाम Vs.	DCIT Circle-6 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASPA 2106 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Vijay Goyal, CA
राजस्व की ओर से / Revenue by : Smt. Runi Paul, DCIT

सुनवाई की तारीख / Date of Hearing : 28/07/2020
उद्घोषणा की तारीख / Date of Pronouncement: 03 /08/2020

आदेश / ORDER

PER: R.C. Sharma, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 18.11.2019 for the A.Y. 2015-2016, in the matter of order passed by the A.O. u/s 143(3) of the Income Tax Act, 1961 (in short, the Act). The assessee has raised following grounds of appeal.

1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in not deciding the Ground No. 1 of the appeal by holding that same is general in nature and does not require any adjudication more so when in the written submission so filed the assessee gave his submission on this ground of appeal also.

2. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in rejecting the claim of the assessee that the land so sold is not a capital assets, therefore no capital gain is chargeable thereon more so when the assessee submitted the complete documents in support of his claim.

3. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in not considering the claim of the assessee that the provision of Section 50C are not applicable on the land so sold by the assessee because the assessee was not the absolute owner of such land but only having the Khatedari rights thereon and he transferred his tenancy rights on such land and Id. CIT(A) erred in not giving her finding on this issue.

4. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in not confirming the action of the AO wherein he did not deal with the objection of the assessee with regard to applying higher DLC by registrar authorities in the statutory manner.

5. That the order of the Id. CIT(A), confirming the addition made by the AO is arbitrary, capricious and against the law and facts of the case. The order of the Id. CIT(A) in this regard deserves to be set aside and addition made by the AO deserves to be deleted.

6. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in confirming the addition of Rs.61.50 lacs made by the AO."

2.1 Rival contentions have been heard and records perused. The facts in brief are that the assessee is an individual deriving his income from business, interest from parties, interest on FDR. The assessee was jointly owner of an agricultural land 2.09 Hectare wherein the assessee has 1/4th share. During the year under consideration, the assessee and his co-owners sold 2.09 Hectare (8.26 Bigha) agricultural land on 2-12-2014. The DLC rate of the land was Rs. 44,35,410/- per bigha. Accordingly the value of the land

as per the DLC rate comes to Rs.3,66,36,487/-. The said value declared by the assessee was @ Rs.59,56,416/- per bigha which comes to Rs.4,92,00,000/-. The stamp duty authority levied the stamp duty by assessing the value @ 150% of sale value declared in the sale deed valued by stamp duty authority at Rs.7,38,00,000/-. On the basis of declared sale consideration, the assessee offered the gain earned on sales of this land as long term capital gain and part of the same claimed exempted u/s 54B of the Act. The assessment of the assessee was completed u/s 143(3) at the total income of Rs.86,55,578/- as against the returned income of Rs.25,05,580/ by making addition of Rs.61,50,000/- by applying the deeming provisions of Section 50C of the Act being the difference of sales consideration and value assessed by stamp duty authority for levy of stamp duty (Rs.7,38,00,000 minus Rs.4,92,00,000) – 1/4th of Rs.2,46,00,000/-.

2.2 By impugned order, the Id. CIT(A) confirmed the addition of Rs.61.50 lacs made u/s 50C of the Act,

2.3 Now the assessee is in appeal before us. It was argued by the Id. AR of the assessee that as per the provisions of section 2(14)(iii) of the Act the agricultural land so sold by the assessee was not capital asset.

However, while filing of the return as well as at the time of assessment proceedings the assessee could not raise this claim before the AO that the agricultural land so sold is not a capital assets because of mistake or misconception of assessee and his then Id. AR. However during the course of appeal proceedings before Id. CIT (A), this claim was also argued on the ground that the agriculture land so sold is not a capital assets, hence capital gain is not chargeable thereon. The Id. AR of the assessee further contended that the assessee filed application under rule 46A for admission of additional evidence (Page 6-8 of enclosure). The Id CIT(A) also called remand report from AO on the additional evidence. The AO submitted remand report and the assessee submitted rejoinder. The finding of Id. CIT (A) is at Page 13 of the order of Id. CIT (A). The Id. CIT (A) rejected the argument and claim of assessee for the following reasons: -

- (i) The assessee himself declared capital gain on sale of land as long term capital gain and even during assessment proceedings it was never pleaded hence the plea is afterthought.
- (ii) The certificate of Patwari is not appropriate as he is not competent authority to issue the same.
- (iii) The assessee has not objected to the valuation before the appropriate authorities. If the assessee did not agree with the valuation by Sub registrar, he should have made a request before assessing officer for referring the matter to DVO which was not done.

2.4 With regard to the merit of the addition, the Id. AR of the assessee contended that the agriculture land so sold by the assessee is an rural agriculture land (Page copy of sale deed 14-21 & copy of Jamabandi at page 1-2 of enclosure). The land was situated in Village Chimanpura, Urf Dhab Ka Na, Tehsil Amber, District Jaipur population of which according to last censuses i.e. censuses 2011 is 1068 i.e. less than 10,000. (Page 3 of enclosure). Further the land was not situated in the municipality area (Page 4 of enclosure). The copies of following documents were submitted before Id. CIT (A) to substantiate this claim and the same are also enclosed at Page Nos. 1 to 5 of enclosure of this written submission: -

- (i) Copy of Jamabandi to prove that the land so sold was agriculture land. (Page 1-2 of enclosure)
- (ii) Printout of Census 2011 abstract data from the web site <http://censusindia.gov.in/> (Page 3 of enclosure)
- (iii) Certificate of Patwari regarding outside municipal limit (Page 4 of enclosure)
- (iv) Certified copy of revenue record of the agriculture land. (Page 5 of enclosure)

2.5 The Id. AR of the assessee further clarified that from the verification of the above mentioned records, it reveals that: -

(i) the land sold was rural agricultural land situate in Chimanpura, Urf DhabKa Na, Tehsil Amber, District. This village is administered by Panchayat and not by any municipality, Municipal Council, Municipal Corporation, notified area committee, town area committee, town committee etc.

(ii) the population of village (i.e. Area in which land is situated) as per last census was only 1068 i.e. below to 10,000.

(iii) the village (i.e. Area in which land is situated) is about 1 KM far from last municipal limits of Kunda Check Post.

Thus as per provisions of section 2(14)(iii) (a) or (b) of the Income Tax Act, 1961, the land so sold by the assessee is not the capital assets. The land is an agricultural land and this is proved from Jamabandi report. Further the land does not situate in municipal jurisdiction and population of the area where the land is situated is less than 10000. Thus the land does falls in the category 29(4)(iii)(a). The land also does not fall in the category 2(14)(iii)(b) as the population of the area where the land is situated is less than 10000. Thus the land does not fall either in (a) or (b) of section 2(14)(iii) and thus, no capital gain is chargeable thereon.

2.6 As per Id. AR of the assessee, the Id CIT (A) rejected this argument of the assessee simply by holding that the assessee himself declared

capital gain on sale of land as long term capital gain and even during assessment proceedings, it was never pleaded. Hence the plea is afterthought [page 13 para 3.5.3 and 3.5.4 of order of CIT(A)]. However Id. CIT (A) has not adjudicated this matter on merit. The Id. CIT (A) has co-terminus powers of the Assessing Officer. Hence, if some claim is not made during assessment proceedings and subsequently it is raised before Id.CIT (A) the same should be adjudicated in the interest of justice which has not been done by Id.CIT (A) in instant case. The another objection of the Id. CIT (A) is with respect to certificate submitted by the assessee in support of distance of the land from municipal limit which was obtained from Village Patwari. The Id. CIT (A) rejected such certificate by holding certificate of Patwari which is not appropriate as he is not competent authority to issue the same. In this regard, this is to submit that the Patwari is also a government revenue authority, therefore the certificate given by him cannot be doubted. Further in the Income Tax Act, there is no prescribed rule regarding submitting the certificate. Further in the remand report, the AO also accepted the contents of such certificate. For this purpose, the Id. AR of the assessee relied on following circular and judgements

(i) CBDT vide Circular No. 14 of 1955, dt. 11th April, 1955, instructed that "Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way.

(ii) Decision of Gujarat High Court S.R. Koshti V/s. Commissioner of Income Tax- (2005) 276 ITR 165.

(iii) Delhi High Court in the case of CIT Vs. Bharat General Reinsurance Co. Ltd. (1971) 081 ITR 0303, Delhi High Court

2.7 As per Id. AR of the assessee, the provision of Section 50C is a deeming provision under which actual sale consideration is to be substituted by the fair market value which is a DLC Rate as per Sub-Registrar, if actual sale consideration is lower than the DLC Rate. As per the Id.AR of the assessee, in the instant case, the AO was not justified in ignoring DLC Rate and compute the capital gain by taking DLC rate at 1.5 time which was on the basis of the letter issued by the State Govt. dated 14-04-2014 for charging stamp duty in case of sale to any company, firm or institution. As per the Id. AR of the assessee, the letter issued by the State Govt. does not override the provision of Section 50C, according to which market value as per DLC is to be taken whether sale is to an individual or a company.

2.8 On the other hand, the Id. DR vehemently argued that the ground with regard to land being agricultural land was not taken before the AO,

accordingly, the Id. CIT(A) was justified in rejecting the ground taken before him for the first time. With regard to the provisions of Section 50C, he contended that the AO has correctly taken the value as per DLC rate determined by the Sub-Registrar while registering the sale deed.

2.9 We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements and the relevant provisions of law more precisely to the deeming provisions of Section 50C of the Act. From the record, we found that the assessee was joint owner of an agricultural land 2.09 Hectare situated in Village Chimanpura, Urf Dhab Ka Nala, Tehsil Amer, District Jaipur wherein the assessee has 1/4 share. During the year under consideration, the assessee and his co-owners sold 2.09 Hectare (8.26 Bigha) agriculture land on 05/12/2014 by executing the registered sale deed in favour of M/s Nanak Hotel Private Limited. In the registered sale deed the description of the land is agricultural land and at the point of the sale the land was not converted or developed land. The DLC rate of the land was 44,35,410/- per bigha. Accordingly the value of the land as per the DLC rate comes to Rs. 3,66,36,487/-. The sale value declared by the

assessee was Rs. 4,92,00,000/- which comes to Rs. 59,56,416/- per bigha. The stamp duty authority levied the stamp duty by assessing the value @ 150% of value declared in the sale deed valued for stamp duty purpose at Rs. 7,38,00,000/- for stamp duty purpose. During the course of assessment proceedings as well as before Ist appellate authority, the assessee objected the value adopted by stamp duty authorities. The assessee sold the agriculture land without any conversion, change in land use or any short of commercial activities. It was explained to AO that since the agriculture land was sold to the company, therefore by virtue of letter No. F7(39) JAN/2013/Part-1/2845-3385 dated 14.07.2014 issued by Director General, Registrar & Stamps Deptt. Kar Bhawan, Ajmer the duty was collected from buyer of land, by assessing the value of land 1.5 time to the normal rate. However, in the case of the assessee the value assessed by the stamp duty authority 1.5 times of the declared value in sale deed as against the normal rate i.e, DLC rate as mentioned in the circular. The copy of DLC chart applicable as on the date of transaction was submitted along with application submitted under rule 46A of the Act. The total area of land is 2.09 hectare i.e. 8.26 Bigha and highest rate per bigha prevailing at the time of sale was Rs. 44,35,410/- and accordingly the DLC rate of the land

comes Rs. 3,66,36,487/- against which the land was sold for Rs. 4,92,00,000/-, therefore there remains no doubt that the land was not sold below to prevailing market rate. The higher rate applied by the stamp duty authority only because of the fact that the land was sold to company. The DLC rates are indicative of market rate of the property sold. The market rate depends on market condition and not depends whether the buyer is a company or individual. The 1.5 times of the normal rate of the property was assessed just to levy stamp duty but the deemed sale consideration for the purpose of section 50C can be taken as DLC rate and in the case of the assessee sale value declared in the sale deed is much more than DLC rates. As per our considered view, the deeming provision of Section 50C cannot be extended beyond the four corner of the law for which it is meant. Under Section 50C, the Fair Market Value which is in the form of DLC is to be adopted if the sale consideration is lower than DLC Rate. The letter issued by the Director General, Registration & Stamps for levying stamp duty at 1.5 time of DLC Rate in case the sale is affected to a company does not override the provisions of Section 50C. This letter is only meant for collecting higher stamp duty in case of sale to a company, firm or institution. In the instant case, the sale consideration declared by

the assessee was more than DLC rate, therefore, the AO was not justified in substituting the DLC rate by taking 1.5 of the sale consideration of the land so sold by the assessee. Section 50C was introduced in the Income-tax Act, 1961 by the Finance Act, 2002 with effect from 1-4-2003 for substituting valuation done for Stamp Valuation purposes as full value of consideration in place of apparent consideration shown by the transferor of capital asset, being land or building. Earlier there used to be a provision in Section 52 of the Income-tax Act, 1961 which enabled the Assessing Officer to refer the property under transfer to the Valuation Officer for determining market value. However, in K.P. Varghese v. ITO (1981) 131 ITR 597 (Supreme Court), it was held that Section 52(2) cannot be applied to genuine transaction unless there are evidences to show that consideration declared in the sale deed is understated. In other words unless the Revenue was able to show that something over and above the sale consideration had passed hands between the transferee and the transferor, Section 52(2) could not be invoked. It became almost a herculean task for the Assessing Officer to collect evidence to show the exchange of additional money for consideration was other than apparent sale consideration. Accordingly, it was considered to insert a deeming

provision by way of Section 50C for substituting apparent sale consideration by valuation done by SVA subject to certain conditions., calculating capital gains under Section 48. For the purpose of levy of stamp duty, local committee prescribes circle rate or DLC rate. The DLC rates are considered as indicative of fair market value of the property. The real spirit behind the insertion of deeming section 50C to apply a common value for all the property situated in that particular area. Sometimes the State Governments prescribes certain formula based on DLC rates to levy more stamp duty. In the case of the assessee the land was sold to a company and according to the circular F7(39) JAN/2013/Part-1/2845-3385 dated 14.07.2014 the valuation of the agricultural land would be 1.5 time of normal value in case the purchaser is a company, firm or institution. The multiplication by 1.5 time of normal rate has been prescribed by State Govt. for the purpose of levy of more stamp duty from Company/Firms/or Institution who buys the land. This Circular is no way going to affect the fair market value of land i.e. DLC The DLC rate prescribed for the land was Rs. 44,35,410/- per bigha accordingly the normal value of the land as per the DLC rate comes to Rs. 3,66,36,487/-. The sale value declared by the assessee was Rs.

4,92,00,000/- which comes to Rs. 59,56,416/- per bigha. The sale value declared by the assessee was more than the DLC rate which is indicative of fair market value prevailing in that area. The fair market value cannot vary according to the status of the buyer person. If buyer is an individual then the fair market value would be Rs. 3,66,36,487/- and if the buyer is a company or firm or institution then the fair market value of the property would be 1.5 time of the normal value, this cannot be intention of Section 50C which require substitution of fair market value i.e. DLC in place of sale consideration mentioned in the sale deed, if it is found to be lower than DLC. Furthermore, the stamp duty authority levied the stamp duty arbitrary by assessing the value @ 1.5 time of value declared in the sale deed valued for stamp duty purpose at Rs. 7,38,00,000/- for stamp duty purpose as against 1.5 time of normal DLC. Furthermore as per provisions of Income Tax Act if the AO does not agree with the explanation of the assessee with regard to consideration disclosed by him then he should refer the matter to DVO for getting its market rate estimated as on date of the sale. In case AO is not satisfied with the explanation of the assessee, he 'should' refer the matter to the DVO for the valuation purpose. Thus as per provisions of this section if the assessee raise any sort of objection

regarding the value adopted by the registrar authority and if the AO is not satisfied on that then the AO should refer the matter to DVO. This is a legal requirement which must be complied with by the AO.

2.10 In view of above discussions, it is undisputed fact that assessee had declared sale consideration more than DLC, accordingly there is no justification for making any addition u/s 50C of the Act. We direct accordingly.

3.0 In the result, the appeal of the assessee is allowed in terms indicated hereinabove

Order pronounced in the open court on 03 /08/2020.

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

जयपुर / Jaipur

दिनांक / Dated:- 03/08/2020.

*Mishra.

Sd/-
(रमेश सी0 शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य / Accountant Member

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

1. अपीलार्थी / The Appellant- Shri Om Prakash Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-6, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलार्थी अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1393/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar