

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

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.278/JP/2020
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Ram Prasad Meena 207, Ajay Ahuja Nagar Extension Rangbari, Kota	बनाम Vs.	The ITO Ward 1(2) Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BVLPM 0033J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by: Smt. Runi Paul , JCIT DR

सुनवाई की तारीख/ Date of Hearing : 17/08/2020
उदघोषणा की तारीख/Date of Pronouncement: 03 /09/2020

आदेश/ ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of Id.CIT (A), Kota dated 21.02.2020 for the Assessment Year 2014-15 passed under section 143(3) of the Income Tax Act, 1961 on the grounds mentioned hereinbelow.

“1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.77,74,535/- u/s 56(2)(vii)(b)(ii), being difference between the stamp duty value and purchase value of agricultural land by not accepting the contention of assessee that this section is applicable on purchase of immovable property being a capital asset and

since agricultural land purchased by assessee is not a capital asset, provision of said section is not applicable.

2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.38,38,739/- by treating the source of investment in agricultural land to this extent as unexplained.

2.1 Brief facts of the case are that the assessee filed his return of income declaring total income of Rs.1,96,940/- on 8-07-2014 without specifying the nature of income and nature of business. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 30th Dec., 2016 by ITO concerned by making addition of Rs. 77,74,535/- u/s 56(2)(vii)(b)(ii) of the Act and Rs. 40,94,290/- as unexplained investment on purchase of agricultural land at a total income of Rs. 1,20,65,770/-.

2.2 Aggrieved by the order of the AO, the assessee preferred the appeal before the Id. CIT(A) and the Id. CIT(A) after considering the case of both the parties partly allowed the appeal filed by the assessee.

2.3 Now aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before us on the grounds mentioned hereinabove.

2.4 The Ground No. 1 raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition u/s 56(2)(vii)(b)(ii) of the Act being difference between stamp duty value and purchase value of agricultural land.

2.5 The Id. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the Revenue authorities and submitted that the Revenue authorities fell in error in confirming the addition u/s 56(2)(vii)(b)(ii) of the Act being difference between the stamp duty value and purchase value of agricultural land, by not accepting the contention of the Id.AR of the assessee that provisions of Section 56 are only applicable on purchase of “immovable property” being a “capital asset”. As per Id.AR, since the agricultural land purchased by the assessee is not a “capital asset”, therefore, the provisions of Section 56 are not attracted in the case of the assessee. The Id.AR of the assessee relied on the written submissions filed by him regarding the Ground No. 1 which are reproduced as under:-

“1. The assessee belongs to an agricultural family. The father of assessee Sh. NainaLalMeena has been doing the agricultural activity over last 30 years. During the year the father of assessee has purchased 4 agricultural lands in the name of assessee for Rs.40,94,290/- including stamp duty and registration charges as mentioned at Pg 2-3 of the assessment order. The Sub-Registrar for stamp duty purpose valued it at Rs.1,18,68,825/-. Accordingly, AO made the addition of Rs.77,74,535/- (1,18,68,825-40,94,290) u/s 56(2)(vii)(b)(ii) of the Act.

2. Before Ld. CIT(A) assessee submitted that section 56(2)(vii)(b)(ii) is not applicable as only those properties which are capital asset fall in the ambit of this section. The agricultural land purchased in the name of assessee do not fall in the definition of capital asset and therefore, this section is not applicable.

3. The Ld. CIT(A) held that section 56(2)(vii)(b) makes reference to any immovable property and not the capital asset. Agricultural land is very well covered under any immovable property and thus falls within the preview of section 56(2)(vii)(b). Accordingly, he confirmed the addition.

Submission:-

1. The provisions of section 56(2)(vii)(b)(ii) reads as under:-

"(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(b) any immovable property,—

(i)

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration

Explanation.—For the purposes of this clause,—

(d)"property" means the following capital asset of the assessee, namely:-

(i) immovable property being land or building or both;

(ii) shares & securities

(iii) jewellery

.....

(ix) bullion

Thus as per the above explanation, all moveable or immovable properties of any nature are not covered in the definition of property. Only those moveable or immovable properties which are held as capital assets and which falls in any of the clauses (i) to (ix) are only covered u/s 56(2)(vii). Accordingly, any property which is not a capital asset is not covered within the meaning of moveable or immovable properties u/s 56(2)(vii). In the present case, the agricultural land purchased by the assessee is situated at village Mandana which is at a distance of 28 kms from the municipal limit of Kota. Hence, the agricultural land purchased in the name of assessee is not a capital asset as per the provisions of section 2(14) of the Act and therefore, not covered by the definition of 'property' given in Explanation (d) to section 56(2)(vii)(b) of the Act.

2. For this purpose reliance is placed on the decision of Hon'ble ITAT Bench in case of ITO Vs. Sh. Trilok Chand Sain where at Para 14 (**PB 25**) it is held as under:-

"On reading of provisions of 56(2)(vii)(b), we find that it refers to any immovable property. Further, provision of section 56(2)(vii)(c) refers to any property other than immovable property. The meaning of the term "property" has been provided in Explanation (d) to section 56(2)(vii) where the term "property" has been defined to mean capital asset of the assessee namely

immovable property being land or building or both. It has been contended by ld AR that all immovable properties of any nature are not covered in the definition of property. Only those immovable properties which are held as capital assets and is in nature of land or building or both are only covered u/s 56(2)(vii). We agree with the contention of ld AR that where the term “property” has been defined to mean a capital asset as so specified and where an immovable property as so specified being land, building or both is not held as an capital asset, it will not be subject to the provisions of section 56(2)(vii)(b) of the Act.”

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.
“

2.6 On the other hand, ld. DR relied on the orders passed by the Revenue authorities on this ground.

2.7 We have heard ld. counsels for both the parties, perused the materials placed on record, orders passed by the Revenue authorities as well as judgements/orders cited by the parties. From the record, we noticed that the AO had made addition in the case of the assessee u/s 56(2)(vii)(b)(ii) of the Act on the ground that agricultural land purchased by the assessee for stamp duty purposes is valuing at Rs. 1,18,68,825/- and during the year the father of the assessee had purchased the said agricultural lands in the name of the assessee for a total consideration of Rs.40,94,290/-. Therefore, the AO had made addition on the difference amount of Rs.77,74,535/-, applying the provisions of Section 56(2)(vii)(b)(ii) of the Act by holding that agricultural land is very well covered under the term “immovable property” and thus falls within the purview of Section 56(2)(vii)(b)(ii) of the Act. Accordingly, the ld. CIT(A) also confirmed the said addition.

2.8 However, in order to decide the controversy in question, it is necessary and imperative for us to first deliberate upon the pure wordings of the provisions of Section 56(2)(vii)(b)(ii) of the Act which reads as under:-

"(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(b) any immovable property,—

(i)

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration

Explanation.—For the purposes of this clause,—

(d)"property" means the following capital asset of the assessee, namely:-

(i) immovable property being land or building or both;

(iv) shares & securities

(v) jewellery

.....

(ix) bullion."

Thus on the plain reading of the above Explanation, it is implicit clear that all the "moveable" and "immovable properties" of any nature are not covered under the definition of "property". Accordingly, on those "movable" and "immovable properties" which are held as "capital asset" and which falls in any of the clauses (i) to (ix) are only covered u/s 56(2)(vii) of the Act. Thus any property which is not a "capital asset" is not covered within the meaning of "moveable" or immovable

properties” u/s 56(2)(vii) of the Act. The ld.AR in order to support his contention had also relied on the decision of ITAT Coordinate Bench in the case of ITO vs Shri Trilok Chand (ITA No. 449/JP/2018 order dated 26-05-2020) wherein also under identical situation, the ITAT Coordinate Bench had decided that provisions of Section 56(2)(vii) are applicable only in the case of “capital asset” and the operative portion of the order of ITAT Coordinate Bench is reproduced below.

“ 14. On reading of provisions of 56(2)(vii)(b), we find that it refers to any immovable property. Further, provision of section 56(2)(vii)(c) refers to any property other than immovable property. The meaning of the term “property” has been provided in Explanation (d) to section 56(2)(vii) where the term “property” has been defined to mean capital asset of the assessee namely immovable property being land or building or both. It has been contended by ld AR that all immovable properties of any nature are not covered in the definition of property. Only those immovable properties which are held as capital assets and is in nature of land or building or both are only covered u/s 56(2)(vii). We agree with the contention of ld AR that where the term “property” has been defined to mean a capital asset as so specified and where an immovable property as so specified being land, building or both is not held as an capital asset, it will not be subject to the provisions of section 56(2)(vii)(b) of the Act.”

Therefore, keeping in view our above discussions and also keeping in view the decision of ITAT Coordinate Bench (supra) under identical circumstances, we are also of the view that any property which is not a “capital asset” is not covered within the meaning of “movable” or “immovable properties” u/s 56(2)(vii) of the Act. In the present case, the agricultural land purchased by the assessee is situated at village Mandana,

Kota which situated at a distance of 28 KM from Municipal Limits of Kota. Therefore, the agricultural land purchased in the name of the assessee is not a “capital asset” as per provisions of Section 2(14) of the Act and it is not covered by the definition of “property” given in Explanation to Section 56(2)(vii)(b) of the Act. Thus, we direct the AO to delete the addition.

3.1 The Ground No. 2 of the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 38,38,739/ by treating the source of investment in agricultural land to this extent as unexplained.

3.2 The Id.AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the Revenue authorities and has also relied on the written submissions submitted before us which are reproduced below.

“1. The AO in the assessment order has observed that assessee has shown income of Rs.1,96,340/- only in the return of income whereas the agricultural land purchased is Rs.40,94,290/-. The assessee explained that his father Sh. NainaLalMeena was having agriculture land of 30 bigha which is irrigated. In support of the agriculture income KhasraGirdawari, receipt from sale of crop in KrishiMandi and the affidavit of father of assessee was filed. However, the AO held that the evidence of agriculture income filed by the assessee and the income declared by the assessee in return is meagre and assessee is not able to prove the immediate source of investment in the purchase of land. He therefore, treated the investment in agriculture land as unexplained and made addition for the same.

2. The Ld. CIT(A) after considering the evidence of agriculture land holding, crop sown, crop sold and the sale receipts of various crops by the assessee's father held that only the profit out of the sale receipt of various crops can be considered as available for investment and not the entire sale receipt. The total sale receipt for FY 2011-12 to 2013-14 (upto 26.10.2013) is worked out by him at Rs.12,77,755/- and by applying a rate of 20% he worked out profit on sale of agricultural produce at Rs.2,55,551/-. To this extent he considered the source of investment as explained and confirmed the balance addition of Rs.38,38,739/-.

3. It is submitted that after the order of Ld. CIT(A) there is no dispute as to the fact that source of investment in the agricultural land is out of the agricultural income earned by the family out of the ancestral agricultural land of 30 bigha at village Chadawad, Tehsil Sangod, Kota. This land is fully irrigated in which various crops like wheat, dhaniya, sarso, soyabean, lahsun, etc. is cultivated. In course of assessment proceedings the assessee vide letter dt. 06.09.2016 (**PB 6**) explained that generally the cultivation of crops is done twice in the year in addition to the seasonal vegetables. The vegetables and lahsun are sold in local market/ vegetable mandi for which it is not practically possible to get the sale receipt. However, the crops like sarso, soyabean, wheat, tilli, etc. is sold in krishimandisamiti through artiya for which the mandi receipt is available. The details of such receipt for FY 2010-11 to 2013-14 was filed (**PB 8-9 & 11-12**). According to these details the agricultural receipt is as under:-

FY	Receipt evidence from ledger of artiya Madhav Lal Badri Lal & Sons (in Rs.)	Receipt evidence from krishimandi parchi (in Rs.)	Total	PB Pg
2010-11	Details not available	3,75,744/-	3,75,744/-	11
2011-12	6,93,594/-	2,52,912/-	9,46,506/-	8 & 11
2012-13	3,27,035/-	1,87,543/-	5,14,578/-	8 & 11
2013-14 (upto 16.12.13)	2,57,126/-	61,450/-	3,18,576/-	9 & 12
Total	12,77,755/-	8,77,649/-	21,55,404/-	

The above evidence is only an indication of the agriculture income of the assessee. This does not include the sale of lahsun and vegetables which is sold in local market. The average income from sale of lahsun per bigha comes to Rs.30,000/- to Rs.35,000/- per bigha, i.e. Rs.9 to 10 lacs per annum. Similarly the realisation from sale of vegetable is also Rs.30,000/- to Rs.40,000/- per bigha, i.e. Rs.9 to 12 lacs p.a. Therefore, after considering the agriculture expenses and the household expenses, the net saving from agriculture is approximately Rs.10 lacs p.a. i.e. around Rs.25,000/- to Rs.30,000/- per bigha which is quite reasonable. Thus, the source of investment in the agricultural land is out of the agricultural income and savings of the family of past years.

4. The Ld. CIT(A) has considered the agricultural income from FY 2011-12 to 2013-14 only at Rs.12,77,755/- as per the ledger account of assessee in the books of Madhav Lal Badri Lal & Sons. He has not considered the evidence of agricultural crop sold directly through vikray parchi amounting to Rs.8,77,649/- as above. He has also not considered the sale of lahsun/ vegetables which is sold in local market/ vegetable market for which krishi mandi vikray parchi is not generated. This apart he has considered that for earning the agriculture income 80% is incurred in expenses which is grossly unreasonable. In fact the assessee belongs to an agricultural family and involves in the agriculture activates themselves. Therefore, the expenditure on agriculture is hardly 40%. Thus, the income from agriculture should be estimated at 60% of the sale receipt. Thus, even as per the evidences available, the income available from the sale of agriculture crop, on the basis taken by Ld. CIT(A), works out at Rs.12,93,242/- (60% of Rs.21,55,404/-) as against Rs.2,55,551/- worked out by him. Further when the income from sale of lahsun and vegetable is included the source of investment in the agricultural land gets fully explained.

In view of above, addition of Rs.38,38,739/- confirmed by Ld. CIT(A) be directed to be deleted.’’

3.3 On the other hand, the ld. DR relied on the orders passed by the Revenue authorities.

3.4 We have heard ld. counsels for both the parties, perused the materials placed on record, orders passed by the Revenue authorities as well as judgements/orders cited by the parties. From the facts on record, we found that the assessee has shown income of Rs. 1,96,340/- in the return of income whereas the agricultural land purchased is Rs. 40,94,290/-. In this respect, the assessee has categorically explained that his father was having agricultural land of 30 Bigha which was irrigated. The assessee in support of the agriculture income filed the Khasra

Girdawawri, receipt from sale of crop in Krishi Mandi and the affidavit of his father. However, the AO held that the evidence of agricultural income filed by the assessee in his return is meager and the assessee was not able to prove the immediate source of investment in the purchase of land. The Id. CIT(A) held that only the profit out of the sale receipt of various crops can be considered as available for investment and not the entire sale receipt. Therefore, applying the rate of 20% of the total receipts, the Id. CIT(A) worked out profit on sale of agricultural produce and confirmed the balance addition. In this case, we noticed that there is no dispute as to the facts that source of investment in the agricultural land is out of the agricultural income earned by the family out of the ancestral agricultural land at Village Chadawad. According to the assessee, this land is fully irrigated in which various crops like, wheat, dhaniya, sarso, soyabean, lahsun etc. are cultivated. The Id.AR of the assessee has drawn our attention through letter dated 06-09-2016 (PBP 6) and explained that generally the cultivation of crops is done twice in the year in addition to the seasonable vegetables. The vegetables and Lahsun are sold in local market/ vegetable mandi for which is it not practically possible to get the sale receipts. However, on the contrary, the crops like sarso, soyaabean,

wheat, tilli etc. is sold in Krishi Mandi Samiti through Adhatiya for which the mandi receipts are available. The details of such receipts are available.

FY	Receipt evidence from ledger of artiya Madhav Lal Badri Lal & Sons (in Rs.)	Receipt evidence from krishimandi parchi (in Rs.)	Total	PB Pg
2010-11	Details not available	3,75,744/-	3,75,744/-	11
2011-12	6,93,594/-	2,52,912/-	9,46,506/-	8 & 11
2012-13	3,27,035/-	1,87,543/-	5,14,578/-	8 & 11
2013-14 (upto 16.12.13)	2,57,126/-	61,450/-	3,18,576/-	9 & 12
Total	12,77,755/-	8,77,649/-	21,55,404/-	

3.5 All the above evidences are only an indication of the agricultural income of the assessee and the above details do not include the sale of lahsun and vegetables which are sold in the local market. Thus the average income from sale of Lahsoon according to the assessee per bigha comes to Rs. 30,000/- to Rs. 35,000/- per bigha i.e. Rs. 9.00 lacs to 10.00 lacs per annum. Similarly, the realization according to the assessee, from sale of vegetables is also Rs. 30,000/- to Rs. 40,000/- per bigha i.e. Rs. 9.00 lacs to Rs. 12.00 lacs per annum. Therefore, after taking into consideration the agricultural expenses and household expenses, the net savings from the agriculture in the case of the assessee is approximately Rs. 10.00 lacs per annum which is around Rs. 25,000/- to Rs. 30,000/- per bigha and it is quite reasonable. We notice that the Id. CIT(A) has only considered the agricultural income as per ledger account of the assessee in the books of Madhav Lal Badri Lal & Sons but has not considered the

evidence of agricultural crop sold directly through Vikray Parchi amounting to Rs. 8,77,649/-. Apart from above, the Id. CIT(A) has also not considered the sale of lahsoun/ vegetables which are sold in the local market/ vegetables market for which Krishi Vikraya Parchi was not generated. Apart from above, the Id. CIT(A) has considered that for earning agricultural income, 80% is incurred in expenses which according to us is not quite reasonable. It is an undisputed fact that the assessee belongs to an agricultural family and involves in the agricultural activities themselves. Therefore, we are in agreement with the submission of the assessee that expenditure on agriculture is hardly 40% as entire family members are involved in the agricultural activities. Therefore, in such circumstances, the income from agriculture according to us should have been estimated at 60% of sale receipts. Thus even as per the evidences available, income from sale of agriculture crop on the basis taken by Id. CIT(A) works out at Rs. 12,93,242/- which is 60% of Rs. 21,55,404/-.

3.6 After having deliberated upon the submissions of both the parties and taking into account the factual position of the present case, we found from the record that the Id. CIT(A) had not added/ included the income of the assessee from sale of Lehsun and Vegetables. We had noticed that

the average income from sale of Lehsun per bigha comes to Rs. 30,000/- to 35,000/- i.e. Rs. 9.00 lacs to Rs. 10.00 lacs per annum and similarly the realization from sale of vegetables is Rs. 30,000/- to Rs. 40,000/- per bigha i.e. Rs. 9.00 lacs to Rs. 10.00 lacs per annum. Therefore, after considering the agriculture expenses and the house hold expenses, the net savings from Lehsun and Vegetables by the assessee is approximately Rs. 10.00 lacs per annum i.e. around Rs. 25,000/- to Rs. 30,000/- per bigha which is quite reasonable. Thus if we consider the income / savings of the assessee for the last 04 years as has been mentioned in the chart w.e.f. for A.Y. 2010-11 to Assessment Year 2013-14 then it comes to approximately Rs. 40.00 lacs and in this way by considering the income from agriculture as has been calculated in the preceding para, the bifurcation of which is Rs. 12,93,243/- from sale of agriculture crop and approximately Rs. 40.00 lacs from the sale of Lehsun and Vegetables for the last 04 years which is quite sufficient and fully explain the source of investment in the purchase of agricultural land.

3.7 Therefore, in our considered view, the assessee has fully proved on record the source of investment in the purchase of agricultural land. Therefore, keeping in view our above discussions, we direct the AO to

delete the addition of Rs. 38,38,739/- as confirmed by the Id. CIT(A).

Thus Ground No. 2 of the assessee is allowed.

4.0 In the result, the appeal filed by the assessee is allowed with no order as to cost.

Order pronounced in the open court on 03 /09/2020.

Sd/-
(रमेश सी.शर्मा)
(Ramesh C. Sharma)
लेखासदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03 /09/2020.

*Mishra

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

1. अपीलार्थी / The Appellant-Shri Ram Prasad Meena, Kota

2. प्रत्यर्थी / The Respondent-The ITO, Ward- 1(2),Kota

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. 278/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar