

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "D.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. 337/JP/2019  
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Umesh Chand Gupta No. 51/207, Pratap Nagar, Sanganer, Jaipur.	बनाम Vs.	The ITO, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGDPG 6009 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms Manee Prabha (C.A.)  
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 01/09/2020  
उदघोषणा की तारीख / Date of Pronouncement: 03/09/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 10.01.2019 of Id. CIT (A)-III, Jaipur for the assessment year 2009-10. Due to prevailing COVID-19 pandemic condition the hearing of the appeals is concluded through video conference. The assessee has raised the following grounds:-

*"1. On the facts and circumstances of the case CIT (Appeals) erred in disallowing cost of improvement incurred by the*

*assessee on the original assets of Rs.1,15,000/-, cost of improvement is supported by the Registry documents. Looking to the facts and circumstance of the case and disallowance is unjustified and bad in law.*

*2. AO disallowed u/s 54 only on account of the Property purchased in the Wife name, but on the facts and circumstances of the case CIT (Appeals) erred in disallowing the exemption u/s 54 on the ground that the asset is only structure and it is unfinished.*

*The CIT (Appeals) failed to appreciate the fact that the new asset is residential house property (Under Housing Scheme of RHB,) and assessee has incurred Rs. 3,34,800/- to make it liveable. Looking to the facts and circumstance of the case and disallowance of Exemption u/s 54 is unjustified and bad in law.*

*3. On the facts and circumstances of the case CIT (Appeals) erred in disallowing registry expense of Rs. 51,900/- paid on property purchased (on new Assets). Looking to the facts and circumstance of the case and disallowance is unjustified and bad in law.*

*4. On the facts and circumstances of the case CIT (Appeals) erred in disallowing cost of improvement incurred by the Assessee amounting to Rs.3,34,800/-. Assessee incurred cost of improvement on property to make it liveable. Total cost of property is amounting to Rs. 12,36,700/-. This has not considered by the CIT (Appeals). Looking to the facts and circumstance of the case and disallowance is unjustified and bad in law.*

*5. The appellant craves leave to add, amend, and alter any of the grounds before or during the course of hearing."*

2. Ground no. 1 is regarding disallowance cost of improvement being the cost of construction of boundary wall of Rs. 1,15,000/- while computing the long term capital gain on sale of plot of land. The assessee is an individual and sold plot of land on 05.11.2008 for a consideration of Rs. 18,50,000/-. It appears that the assessee did not file any return of income U/s 139 of the Act, therefore, on the basis of information of sale of property the AO issued notice U/s 148 on 31.03.2016. In response to various notices issued by the AO U/s 142(1) as well as show cause notice the assessee filed his reply dated 28.09.2016 and claimed that the assessee has utilized the sale consideration for purchase of a skelton constructed house property in the name of wife Smt. Saroj Gupta and construction was done latter on by the assessee in the said property. The assessee also explained that a new property was purchased for a consideration of Rs. 8,50,000/- excluding stamp duty and transfer charges borne by the assessee. The assessee also furnished the computation of long term capital gain and claim of index cost of improvement on account of boundary wall constructed on the existing property as well as deduction U/s 54 of the Act in respect of new house property purchase in the name of wife. The AO disallowed the claim of deduction u/s 54 as well as cost of

improvement on account of construction of boundary wall. The assessee challenged the action of the AO before the Id. CIT(A) however, the Id. CIT(A) has upheld the action of the AO regarding the cost of improvement on account of boundary wall on the ground that the assessee has failed to produce any evidence to prove the claim.

3. Before us, the Id. AR of the assessee has submitted that the assessee purchase a plot of land bearing no. 86/149 Pratap Nagar, Scheme of Rajasthan Housing Board, Sanaganer, Jaipur. As per sale deed dated 13.09.2004 the assessee purchased a plain residential plot without any construction. The Id. AR has referred to the sale deed dated 13.09.2004 at page 23 of the paper book and submitted that the description of the property clearly reveals that there was no construction on the vacant plot at the time of purchase. The Id. AR has then referred to the sale deed dated 05.11.2008 whereby the said plot of land was sold by the assessee and submitted that at page 31 of the paper book it is stated that there is boundary wall around the said plot running 57 meter. Thus, the Id. AR has submitted that once there was construction of wall on the plot of land then in the claim of cost of improvement ought to have been allowed while computing the capital gain.

4. On the other hand, Id. DR has submitted that the assessee has not produced any evidence regarding any expenditure incurred for construction of boundary wall. The assessee has also not produced any documents to show as to when the boundary wall was constructed therefore, in the absence of any supporting evidence the claim of the assessee cannot be accepted. She has further submitted that even in the sale deed the description of boundary wall is added subsequently in hand written instead of type contents of sale deed. She has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. Except the description of plot of land in question given in the purchase deed dated 13.09.2004 as well as sale deed dated 05.11.2008 the assessee has not produced any documentary evidence in support of the claim of expenditure incurred for construction of the alleged boundary wall. Therefore, the claim of cost of construction of Rs. 1,15,000/- can be considered only on the basis of estimation of cost of boundary wall. We note that at the time of purchase the description of the property clearly stated that there was no construction of any kind on the plot bearing no. 86/149 Pratap Nagar, Scheme of Rajasthan Housing Board, Sanaganer, Jaipur whereas at the time of sale deed

dated 05.11.2008 the description of the property includes plot of land in question and the boundary wall around the said plot with length of 57 meters. Thus, the length of the boundary wall is correctly mentioned based on the dimension of the plot as 18\*10.50 meters. Once the boundary wall was in existence at the time of sale though the correct description of the boundary wall is not available being the height of the boundary wall and thickness of the boundary wall, then, the claim of Rs. 1,15,000/- made by the assessee is without any supporting evidence as well as necessary particulars. Having regard to the facts and circumstances of the case when the assessee has not produced even the particulars of the boundary wall being height and thickness of the wall we estimate cost of construction of the boundary wall at Rs. 75,000/-. The AO is directed to allow the cost of improvement while computing the capital gain.

6. Ground no. 2 is regarding disallowance of deduction U/s 54 of the Act on account of the new property purchase by the assessee in the name of wife.

7. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The AO disallowed the claim of deduction U/s 54 of the Act on the ground that the new asset was purchased by

the assessee in the name of wife and not in his own name. The Id. CIT(A) has confirmed the disallowance of deduction but on a separate ground and reasoning that the property purchased by the assessee was not habitable residential house. The relevant part of the findings of the Id. CIT(A) on this issue as under:-

*"Further the A/R of the appellant claimed the deduction u/s 54 of the Income Tax Act, 1961. I find from the details it is find that building is only structure, building is unfurnished. The A/R of the appellant failed to file any details of the construction or improvement made in the said structure. Therefore, this structure is not consider as residential building. Hence the deduction u/s 54 is not given because the property is not in position to live the persons."*

It is pertinent to note that the assessee has purchased a residential house which was originally allotted by the Rajasthan Housing Board. Though the residential house bearing No. 192/351 Measuring 120 sq. mtr. MIG category purchased by the assessee was not fit for occupation at that point of time being a skelton unfurnished house however, the structure as constructed by the Housing Board was a residential house and thereafter the assessee has carried out the necessary work of renovation to make it habitable. The assessee has produced various documents in support of renovation work carried out in the said property after acquisition. Therefore, once the assessee has

purchased a residential house which was originally allotted by the Rajasthan Housing Board and thereafter the assessee has also carried out renovation work to make the same habitable then it would be amounting to acquisition of a new residential house by the assessee. Therefore the denial of the claim by Id. CIT(A) on this ground is not justified. However, since the assessee has sold only plot of land and not a residential house, therefore, the deduction U/s 54 of the Act is not admissible but the deduction U/s 54F is allowable. Hence, in the facts and circumstances of the case when the assessee purchased the said new residential house property in the name of wife but the investment was made by the assessee from his bank account as it is evident from the bank account statement at page 49 of the paper book then the claim of deduction U/s 54F of the Act cannot be denied on the ground of investment made in the name of wife. The Id. AR relied upon the decision on this Tribunal dated 08.12.2017 in ITA No. 139/JP/2016 in case of Shri Vivek Jain vs. DCIT wherein this Tribunal has considered and decided this issue in para 9 to 12 as under:-

*"9. During the course of hearing, the Id. AR reiterated the submissions made before the Id. CIT(A). Further, Id. AR also drawn our reference to the recent decision of Hon'ble Rajasthan High Court in case of Sh. Mahadev Balai vs. ITO (D.B. ITA No. 136/2017 & others dated 07.11.2017) wherein in the context of*

*section 54B, it was held that where the investment is made in the name of the wife, the assessee shall be eligible for claim of deduction u/s 54B of the Act.*

*10. In the said case, the assessee has sold agricultural land and purchased another agricultural land in the name of his wife and claimed deduction u/s 54B of the Act. The Co-ordinate Bench vide its order in ITA No. 333/JP/2016 dated 26.12.2016 following the decision of Hon'ble Rajasthan High Court in case of Kalya vs. CIT(supra) had decided the issue against the assessee and has confirmed the denial of deduction u/s 54B of the Act. In the context of said facts, on appeal by the assessee, the Hon'ble Rajasthan High Court has framed the following substantial question of law:*

*"Where Id. ITAT was justified in disallowing the exemption u/s 54B of the Act without appreciating that the funds utilized for the investment for purchase of the property eligible u/s 54B belonged to the appellant only and merely the registered document was executed in the name of the wife and further the wife had not separate source of income."*

*11. The Hon'ble Rajasthan High Court, after considering its earlier decision in case of Kalya vs. CIT(supra) and the various other decisions of Hon'ble Delhi High Court, Hon'ble Madras High Court, Hon'ble Karnataka High Court, Hon'ble Punjab and Haryana High Court, and Hon'ble Andhra Pradesh High Court, as also relied upon by the assessee, has held that it is the assessee who has to invest and it is not specified in the legislation that the investment is to be in the name of the assessee and where the investment is made in the name of wife, the assessee shall be eligible for deduction and has thus decided the matter in favour of the assessee. The relevant findings of the Hon'ble Rajasthan High Court are contained at para 7.2 and 7.3 of its order which are reproduced as under:-*

*"7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts,*

*the word used is assessee has to invest, it is not specified that it is to be in the name of assessee.*

*7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will be considered a part of investment and same is required to be accepted."*

*12. In light of legal proposition so laid down by the Hon'ble Rajasthan High Court in case of Mahadev Balai (supra), where the investment in the new house property has flown from the assessee, which is not in dispute in the instant case, merely for the reason that the new residential house property has been purchased by the assessee in the name of his wife, the same cannot be basis for the denial of deduction claimed u/s 54F of the Act."*

Accordingly, we direct the AO to compute allowable deduction U/s 54F after considering the sale proceeds and the total amount of investment for purchase of new house property.

8. As regards the claim of expenditure incurred by the assessee on the renovation of the new asset purchased by the assessee we note that neither the AO nor the Id. CIT(A) has considered this issue despite the fact that the assessee has produced documentary evidence in

support of the claim. We accordingly, set aside this issue of claim of expenditure claimed on the renovation of the house property for the purpose of deduction U/s 54F of the Act to the record of the AO to decide the same after considering the evidence filed by the assessee and after giving appropriate opportunity of hearing to the assessee.

9. Ground no. 3 is regarding disallowance of the expenses incurred by the assessee being stamp duty and transfer charges.

10. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The assessee has claimed the stamp duty and registry expenses of Rs. 51,900/- as cost of new asset purchased by the assessee. This issue was not considered by the AO as the deduction U/s 54 of the act was disallowed at threshold on the ground that the assessee has purchased new asset in the name of the wife. The Id. CIT(A) though confirmed the disallowance but on the ground that the new house purchased by the assessee is not fit of habitation and also rejected this claim of transfer expenses in the absence of supporting evidence. It is pertinent to note that this expenditure is evident from sale deed itself whereby the assessee has purchased a new property in the name of wife. The stamp duty is part and parcel of the sale deed/purchase document and therefore, the total expenditure

of Rs. 51,900/- is evident from the registered documents itself. Hence, in the facts and circumstances of the case we allow this claim of Rs. 51,900/- being part of cost of new property.

11. Ground no. 4 is regarding disallowance of cost of improvement/renovation of the new property which is considered by us along with ground no. 2, therefore, this ground stands disposed off in terms of our finding of ground no. 2

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

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

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

दिनांक / Dated:- 03/09/2020.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Umesh Chand Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), 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. 337/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar