

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR “SMC” BENCH, JABALPUR
[Through Virtual Hearing]**

BEFORE SHRI NRS GANESAN, JUDICIAL MEMBER

ITA No.38/JAB/2019
Assessment year: 2012-13

Shri Vinod Kumar Guru, Bungalow No.5/23, Meridian Bungalows, Opp. VC Bungalow, Pachpedi, Jabalpur (MP) – 482001 (PAN – AEWPG 9128D)	vs.	Income Tax Officer, Ward 2(1), Ayakar Bhawan, Annexe Building, Mission Chowk, Jabalpur (M.P.)
(Appellant)		(Respondent)

Appellant by	Shri Rahul Bardia, CA
Respondent by	Shri I B Khandel, DR
Date of hearing	17/11/2020
Date of pronouncement	17/11/2020

ORDER

Per NRS Ganesan, JM:

1. This appeal of the assessee is directed against the order of CIT(A)-1, Jabalpur dated 02.4.2019 and pertains to AY 2012-13.
2. The only issue arises for consideration is determination of fair market value as on 01.04.1981 in respect of the property sold by assessee at Bhopal along with his brother, Shri Surendra Kumar Guru. Shri Rahul Bardia, Id. Representative for the assessee submitted that the assessee along with his brother sold a property at Bhopal for Rs.3.00 crores. The assessee valued the property as on 01.04.1981 at Rs.6,37,000/- and after indexation, arrived the value at Rs.50,00,450/-, having invested Rs.99,99,950/- in the capital gain account. The assessee claimed NIL capital gain. However, the AO, on the basis

of report said to be received from Income Tax Officer (I&C), Bhopal, reopened the assessment and estimated the fair market value as on 01.04.1981 at Rs.1,97,758/-. However, in the case of assessee's brother, the return was not selected for scrutiny. Ld. Representative of the assessee further submitted that the assessee's brother, Shri Surendra Kumar Guru filed the return of income for the AY 2012-13 on 27.08.2012 vide acknowledgment No. 6197520102255. Having not selected the return for scrutiny and failed to issue notice u/s. 147 even after the report received from Income Tax Officer, Bhopal in respect of assessee's brother, according to Ld. Representative for the assessee, the fair market value declared by the assessee for AY 2012-13 for computing the capital gain cannot be disturbed. The Ld. Representative for the assessee further submitted that in respect of property sold by the assessee and his brother at Bhopal, there cannot be two different fair market value, one for the present assessee and another for his brother. Therefore, the fair market value determined by the AO cannot stand in the eye of law.

3 On the contrary, Shri I.B. Khandel, Id. DR submitted that it is not known whether the assessee's brother has filed the return of income or not. Due to bifurcation of Department, the return of the assessee could not be traced, therefore, the Department is not in a position to clarify whether the return of the assessee's brother was taken for scrutiny or not. The AO was also directed to join the video conference hearing. Accordingly, the AO of the assessee's brother at Indore has also joined and he explained that as per the record available before him the return of income filed by the assessee's brother, Shri Surendra Kumar Guru is not taken for scrutiny and as per the record, no notice was issued u/s. 147 also. Due to transition of the Department to faceless assessment, the assessee's records were also not traceable.

4. Having heard the Ld. Representative of the assessee and Ld. Departmental Representative, this tribunal is of the considered opinion that in respect of the property at Bhopal, there cannot be two different fair market value as on 01.04.1981. Even though the fair market value is not a constant figure, it may fluctuate depending upon various factors depending upon the market condition, there should be only one fair market value for assessee and his brother, Shri Surendra Kumar Guru. Even though the AO and the Departmental Representative claims that the return filed by Shri Surendra

Kumar Guru, the assessee's brother is not traceable, the Id. Representative of the assessee has clearly mentioned the acknowledgement number and the date of filing. With this particulars, the Department could verify the return of income. However, due to some technical defect or fault, the AO claim that the same is not traceable. If the Department could not trace the return filed by Shri Surendra Kumar Guru, the assessee cannot be made to suffer. The fact remains that in the return filed by the assessee brother declaring the fair market value of the same property was accepted by the Department, therefore, the same cannot be disturbed for the present assessee also. This Tribunal is conscious of the fact that the principles of res-judicata is not applicable to the income tax proceedings. However, it is well settled principles of law that consistency is the hallmark of judicial proceedings. Moreover, public policy requires consistency. Having accepted the value for Shri Surendra Kumar Guru, the brother of the assessee, this Tribunal is of the considered opinion that the fair market value declared by the assessee for computing the capital gain cannot be disturbed. Therefore this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, the orders of both the authorities below are set aside and the addition made by the AO as confirmed by CIT(A) is deleted

4. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 17th November 2020

Sd/-
(N.R.S.Ganesan)
Judicial Member

Dated: 17/11/2020
Aks(P)

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