

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 300/JP/2019
निर्धारण वर्ष / Assessment Year :2015-16

Shri Yogesh Maheshwari, 5/4, Govind Marg, Anandpuri, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-3, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ADDPM 3905 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 301/JP/2019
निर्धारण वर्ष / Assessment Year :2015-16

Smt. Nirmala Maheshwari, 5/4, Govind Marg, Anandpuri, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-3, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACSPM 9484 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 302/JP/2019
निर्धारण वर्ष / Assessment Year :2016-17

Smt. Kavita Maheshwari, 5/4, Govind Marg, Anandpuri, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-3, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: APBPM 4352 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.R. Sharma (CA) &
Shri Rajnikant Bhatra (CA)
राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 10/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 18/01/2021

आदेश / ORDER**PER: SANDEEP GOSAIN, J.M.**

These are the appeals filed by the different assesseees against the separate orders of the Id. CIT(A)-IV, Jaipur dated 21/12/2018 for the A.Y. 2015-16 & 2016-17 respectively.

2. In all these three appeals of the assesses, common issue have been involved, therefore, for the sake of convenience and brevity, a common order is being passed.

3. As a lead case, we take ITA No. 300/JP/2019 for the A.Y. 2015-16 for deciding the appeals. In this appeal, the assessee has raised following grounds:

“1. That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred in law in confirming finding recorded by the assessing officer that the provisions of Section 56(2)(vii)(b) of the I.t. Act, 1961 are applicable to the purchase of agriculture land(s) situated outside 8 KM of municipal area inasmuch as such agriculture land is not covered in the definition of property as given in clause (d) of explanation to said Section. The addition of Rs. 1401540 made to the income of the appellant and as confirmed by the Id. CIT(A) on this count on account of difference of DLC value and purchase consideration of Agriculture land(s) is therefore wrong, unwarranted and bad in law.

2. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is an individual deriving income from capital gain and other sources. A search was carried out u/s 132 of the Income Tax Act, 1961 (in short, the Act) on 07-01-2016 in case of Dilip Manihar group in which assessee was also covered. The assessee filed his return of income u/s 139 of the Act on 30-03-2016 declaring total income of Rs. 11,05,320/-. The assessee during the year under consideration alongwith Sh. Anil Parwal purchased a land at village Jatwara, Tehsil Bassi, Jaipur on 08.09.2014. The DLC value of the said property was Rs. 23,02,400/-, it was purchased for only Rs. 13,10,000/-. Since, the assessee and Sh. Anil Parwal have jointly purchased this property, the share of the assessee comes out as Rs. 6,55,000/-. Similarly, the assessee alongwith Smt. Nirmala Maheshwari purchased a land at village Bagru Kalan, Tehsil Sanganer, Ajmer Road, Jaipur on 28.04.2014. The DLC value of the said property was Rs. 48,00,679/-, it was purchased for only Rs. 29,90,000/-. Since, the assessee and Smt. Nirmala Maheshwari have jointly purchased this property, the share of the assessee comes out as Rs. 14,95,000/-. The A.O. issued notice u/s 143(2) of the Act and took up assessment proceedings u/s 153B(1)(b) for the assessment year under consideration. The A.O. in assessment order gave finding that "*it was*

observed that the assessee along with Sh. Anil Parwal purchased a land at village Jatwara, Tehsil Bassi, Jaipur on 08.09.2014. It was also observed that while the DLC value of the said property was Rs. 23,02,400/-, it was purchased for only Rs. 13,10,000/-. Since, the assessee and Sh. Anil Parwal have jointly purchased this property, the share of the assessee comes out as Rs. 6,55,000/-. Similarly, the assessee along with Smt. Nirmala Maheshwari purchased a land at village Bagru Kalan, Tehsil Sanganer, Ajmer Road, Jaipur on 28.04.2014. It was also observed that while the DLC value of the said property was Rs. 48,00,679/-, it was purchased for only Rs. 29,90,000/-. Since, the assessee and Smt. Nirmala Maheshwari have jointly purchased this property, the share of the assessee comes out as Rs. 14,95,000/-." and issued show cause notice as to why the difference of Rs. 4,96,200/- { $\frac{1}{2}$ of (2302400-1310000)} and Rs. 9,05,340/- { $\frac{1}{2}$ of (4800679-2990000)} totaling to Rs. 14,01,540/- may not be held as income from other sources in terms of Sec. 56 (2) (vii) (b) of the Act and accordingly added his total income. The assessee in reply stated that the said lands were agricultural land situated outside 8 Km of municipal limits and accordingly are not capital asset within the meaning of Sec. 2 (14) of the Act, therefore, the provisions of Sec. 56 (2) (vii) (b) of the Act were not applicable on the same. The A.O. thereafter reproduced provisions of section 56 (2) (vii) (b) of the Act and relying thereon held

that contention of assessee is not acceptable and added Rs. 14,01,540/- in the hands of assessee in declared income.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and after perusing the material placed on record, upheld the order of the A.O. by observing as under:

"5. *I have perused the written submissions submitted by the Ld. A/R and the order of AO. I am not in agreement with the Ld. A/R for the following reasons:*

That the section 56(2)(vii)(b) is applicable to 'any immovable property'. Now the property is defined in the explanation to the same read as under:

Explanation – for the purposes of this clause---

(a) *****;

(b) *****;

(c) *****;

(d) *Property*"[means the following capital asset of the assessee, namely:-]

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

(ii) *shares and securities;*

(iii) *jewellery;*

(iv) *archaeological collections;*

(v) *drawings;*

(vi) *paintings;*

(vii) *sculptures, [***]*

(viii) *any work of art; [or]*

(ix) *bullion;*]

5.2 *Now the Ld. A/R has contended that capital assets are defined in section 2(14) of the Act and by virtue of sub-clause (iii) to section 2(14), appellant case falls in the definition of agriculture land and thus is outside the ambit of section 56(2)(vii)(b).*

5.3 *The AO on the other hand says section 56(2)(vii)(b) included all sort of land whether agricultural or on-agricultural. The AO is right as the property is defined in very specific way in the definition by mentioning "property means the **following capital assets**". The Ld. A/R on the other hand has read the word '**Capital Assets**' clearly missing out the word '**following**'. The usage of word '**following**' makes the section very specific and clear applying it to both the kind of land, agricultural and non agricultural. In my view the interpretation by the AO is right to include the agricultural land too. On the facts and in the circumstances of the case and that being so the addition made by the AO is upheld. Appellant's appeal in Ground No.1 is dismissed."*

5. Against the above order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

6. At the outset, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before the Bench and the same are reproduced below:

"The Ld. A.O. in assessment order relied on section 56 (2) (vii) (b) as existed at material time and held that it applies to any immovable property

*and thus includes agricultural land beyond specified limit of urban area also and also derived support from section 194-IA which specifically excludes agricultural land from its purview while mentioning transfer of any immovable property. In this connection it is pertinent to peruse the definition of income given in sub-section 2 (24). The sub-section 2 (24) (xv) includes in income **any sum of money or value of property referred to in clause (vii) or (viia) of sub-section 56 (2)**. The sub-section 56 (2) (vii) (a) applies to any sum of money while sub-section 56 (2) (vii) (b) applies to value of property and meaning of property is given in explanation (d) to section 56 (2) (vii). The Ld. A.O. thereafter relied on provisions of section 56 (2) (vii) (b) in respect to property acquired by assessee and reproduced the same in assessment order. The Ld. A.O. only picked the word immovable property from section 56 (2) (vii) (b) but the immovable property being also property r/w definition of income in section 2 (24) (xv) so section 56 (2) (vii) (b) is to be r/w explanation (d) and the mention of immovable property in clause 56 (2) (vii) (b) is within the meaning of said explanation (d) to sub-section 56 (2) (vii). The Ld. A.O. also reproduced part of Explanation (d) under this section while reproducing provisions of section 56 (2) (vii) (b) but has not applied it at all in proper perspective and correct position of law. The Explanation (d) to section 56 (2) (vii) (b) reads as under: -*

"property" [means the following capital asset of the assessee, namely:-]

- (i) immovable property being land or building or both;*
- (ii) shares and securities;*
- (iii) jewellery;*
- (iv) archaeological collections;*
- (v) drawings;]*
- (vi) paintings;*
- (vii) sculptures, [***]*
- (viii) any work of art; [or]*
- (ix) bullion;]*

Thus from the said explanation it is clear that **immovable property being land or building or both should be capital assets for applying section 56 (2) (vii) (b)**. The definition of capital asset is given in section 2 (14) of the Act. The clause (iii) of section 2 (14) specifically excludes agricultural land of the description given therein from capital asset. It is evident from the facts of the case and from perusal of assessment order that the agricultural land purchased by assessee falls in the definition of agricultural land given in Section 2 (14) (iii) and so it is not a capital asset and the same not being capital asset provisions of section 56 (2) (vii) (b) are not applicable even if the same is immovable property being land or building or both. In other words provisions of section 56 (2) (vii) (b) applies only to those immovable property being land or building or both if it falls within the definition of capital asset.

The Id AR relied on the order of the ITAT, Pune Bench, Pune in the case of **Mubark Gafur Korabu Vs ITO, Ward-2, Pune (117 Taxmann.Com 828) dated 05-04-2019 after considering the judgment of Jurisdictional ITAT, Jaipur Bench, Jaipur in case of ITO Vs Trilok Chand Jain (449/JP/2018). He also relied on the decision of ITAT Jaipur Bench in case of Prem Chand Jain Vs. ACIT, ITA No. 98/JP/2019 dated 08-06-2020.**

The Id AR has further submitted that the appellant's case squarely covers from the above judgement of Hon'ble jurisdictional ITAT, Jaipur Bench, Jaipur. The Ld. A.O. is therefore, wrong and has erred in law in applying the provisions of section 56 (2) (vii) (b) in respect to agricultural land purchased by the assessee within the meaning of section 2 (14) (iii) by wrongly holding that same applies to all immovable property being land or building or both. It is therefore requested that the addition of Rs. 14,01,540/- made by Ld. A.O. and confirmed by Ld. CIT(A) u/s 56 (2) (vii) (b) may kindly be deleted."

7. On the contrary, the Id DR has relied on the orders of the authorities below and submitted that the Id. CIT(A) has passed a speaking order considering all the details of the matter.

8. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. We observe from perusal of the record that the only ground raised by the assessee before us is challenging the order of the Id. CIT(A) in confirming the findings of the A.O. to the effect that the provisions of Section 56(2)(vii)(b) of the Act are applicable to the purchase of agricultural land situated outside 8 KM of municipal area. As per the facts of the case, the assessee alongwith Shri Anil Parwal purchased a land at village Jatwara, Tehsil Bassi, Jaipur on 08.09.2014. It was also observed that while the DLC value of the said property was Rs. 23,02,400/-, it was purchased for only Rs. 13,10,000/-. Since, the assessee and Sh. Anil Parwal have jointly purchased this property, the share of the assessee comes out as Rs. 6,55,000/-. Similarly, the assessee along with Smt. Nirmala Maheshwari purchased a land at village Bagru Kalan, Tehsil Sanganer, Ajmer Road, Jaipur on 28.04.2014. It was also observed that while the DLC value of the said property was Rs. 48,00,679/-, it was

purchased for only Rs. 29,90,000/-. Since, the assessee and Smt. Nirmala Maheshwari have jointly purchased this property, the share of the assessee comes out as Rs. 14,95,000/-. Consequent thereupon, the A.O. during the assessment proceedings, after issuing statutory notices and seeking reply of the assessee, relied upon Section 56(2)(vii)(b) of the Act and held that it applies to any immovable property and thus includes agricultural land beyond specified limit of urban area also and the A.O. also derived support from Section 194-IA of the Act which specifically excludes agricultural land from its purview while mentioning transfer of any immovable property. In order to decide this controversy, it is necessary and imperative to evaluate provisions of definition of income as is given in sub-section (24) of Section 2 of the Act. The sub-section (24) (xv) of Section 2 of the Act includes in income **“any sum of money or value of property referred to in clause (vii) or clause (viia) of sub-section (2) of Section 56”**. Section 56 (2) (vii) (a) of the Act applies to any sum of money while Section 56 (2) (vii) (b) of the Act applies to value of property and meaning of property is given in explanation (d) to Section 56 (2) (vii) of the Act. The A.O. thereafter relied on provisions of Section 56 (2) (vii) (b) of the Act in respect to property acquired by assessee and reproduced the same in assessment order and only picked the word immovable property from Section 56 (2) (vii) (b) of the Act but the immovable property being also

property read with definition of income in Section 2 (24) (xv) of the Act. Therefore, in our view, Section 56 (2) (vii) (b) of the Act is to be read with explanation (d) wherein mentioning of immovable property in clause 56 (2) (vii) (b) is within the meaning of said explanation (d) to sub-section 56 (2) (vii) of the Act.

9. After having gone through the explanation (d) to Section 56 (2) (vii) (b), which read as under:

- (d) Property" [means the following capital asset of the assessee, namely: -]
- (i) immovable property being land or building or both;
- (ii) shares and securities;
- (iii) jewellery;
- (iv) archaeological collections;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures, [***]
- (viii) any work of art; [or]
- (ix) bullion;]

10. From the said explanation, it is abundantly clear that **immovable property being land or building or both should be capital assets for applying section 56 (2) (vii) (b) of the Act.** However, the definition of capital asset is given in Section 2 (14) of the Act. The clause (iii) of Section 2 (14) specifically excludes agricultural land of the

description given therein from capital asset which means that agricultural land which are outside 8 KM of the municipal limits are not held to be capital asset and as per the facts of the present case, the agricultural land purchased by the assessee falls in the definition of agricultural land as is given in Section 2 (14) (iii) of the Act, so the same cannot be termed as capital asset. Since the agricultural land purchased by the assessee is not a capital asset, therefore, provisions of Section 56 (2) (vii) (b) of the Act are not applicable as the agricultural land which are not capital asset and are outside the ambit/purview of capital asset. In other words, provisions of Section 56 (2) (vii) (b) of the Act applies only to those immovable properties being land or building or both if it falls within the definition of capital asset. While reaching to this conclusion, we draw strength from the decision of Coordinate Bench of Pune Benches, Pune in the case of **Mubark Gafur Korabu Vs ITO, Ward-2, Pune (117 Taxmann.Com 828) dated 05-04-2019 after considering the decision of Coordinate Bench of Jurisdictional ITAT, Jaipur Benches, Jaipur in case of ITO Vs Trilok Chand Jain (449/JP/2018) has held that: -**

11. Now, coming to the decision of Jaipur Bench of Tribunal in Trilok Chand Sain (supra), wherein provisions of clause (b) of section 56(2)(vii) of the Act were considered. However, they have failed to take into cognizance the provisions of clause (c) of said section, which talks of property other than immovable property. The Tribunal in para 6 refers only to the definition of 'immovable

property' and hold that it is not circumscribed or limited to any particular nature of property. However, clause (c) very clearly talks of property other than immovable property and the word 'property' has further been defined under clause (d) of Explanation thereunder. In the totality of the above said facts and circumstances, there is no merit in reliance placed upon by the learned Departmental Representative for the Revenue on the ratio laid down by Jaipur Bench of Tribunal in ITO v. Trilok Chand Sain (supra). In view of clear-cut provisions of the Act, we find no merit in the orders of authorities below in making the aforesaid addition in the hands of assessee. The ground of appeal No. 1 raised by assessee is thus, allowed."

The Coordinate Bench of ITAT, Jaipur Benches, Jaipur in case of **Prem Chand Jain Vs. ACIT, ITA No. 98/JP/2019 dated 08-06-2020** has held that :-

"On reading of provisions of 56(2)(vii)(b), we find that it refers to any immovable property. Further, provisions of section 56(2)(vii)(c) refers to any property, other than an 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 the Id 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 the Id 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 the instant case, therefore, where the agricultural land doesn't qualify as falling in the definition of capital asset, provisions of section 56(2)(vii)(b) cannot be invoked.”

It is undisputed fact that there is no dispute to the fact that the land purchased by the assessee is an agricultural land outside 8 Km of municipal limits. Therefore, keeping in view the facts and circumstances of the case, we are of the view that the agricultural land purchased by the assessee is not a capital asset, therefore, provisions of Section 56(2)(vii)(b) of the Act are not applicable in the present case. Therefore, we direct the A.O. to delete the addition so made.

11. In the result, this appeal of the assessee is allowed.

12. Now we take ITA No. 301/JP/2019 and 302/JP/2019 for the A.Y. 2015-16 & 2016-17.

From perusal of the record, we found that in both these appeals of the assesseees, the issue is exactly similarly to the issue raised in the appeal of Shri Yogesh Maheshwari in ITA No. 300/JP/2019 for the A.Y. 2015-16. The facts of both these appeals are identical to the facts of Shri Yogesh Maheshwari in ITA No. 300/JP/2019 for the A.Y. 2015-16. The submissions of both the parties are identical to the facts and submissions of Shri

Yogesh Maheshwari in ITA No. 300/JP/2019 for the A.Y. 2015-16, therefore, the findings given by us in the appeal of Shri Yogesh Maheshwari in ITA No. 300/JP/2019 for the A.Y. 2015-16 shall apply mutatis mutandis in these years also.

12. In the result, all these three appeals of the assesseees are allowed.

Order pronounced in the open court on 18th January, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/01/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- (i) Shri Yogesh Maheshwari, Jaipur.
(ii) Smt. Nirmala Maheshwari, Jaipur
(iii) Smt. Kavita Maheshwari, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 300 to 302/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar