

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 1416/JP/2018
निर्धारण वर्ष / Assessment Year :2009-10

Shri Ramkishore Mali (Saini), Gram Bhurthal, Tehsil- Amer, District- Jaipur.	बनाम Vs.	ITO, Ward-7(4), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: N.A.		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Ashish Khandelwal (CA)
राजस्व की ओर से / Revenue by :Smt. Rooni Paul(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/02/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-1, Jodhpur dated 20/09/2018 for the A.Y. 2009-10, wherein the assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred on facts and in law in upholding the finding of A.O. that the agricultural land sold by the assessee is a capital asset within the meaning of Section 2(14)(iii) of the IT Act, 1961.*
- 2. The Id. CIT(A) has erred on facts and in law in incorrectly holding that the claim of appellant that the land sold was ancestral is not found to be correct as he himself has submitted that he purchased the land in 2008 ignoring that assessee has nowhere stated that the land which was sold by him was purchased in 2008."*

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

3. Brief facts of the case are that on the basis of information received from DIT(Inv.)-III, Jaipur, a survey U/s 133A of the Income Tax Act, 1961 (in short, the Act) was conducted at the business premises of one Shri Madan Mohan Gupta, A-30, Saraswati Colony, Sanganer, Jaipur on 23/05/2013. During the course of survey, certain documents with regard to purchase of land was seized and impounded.. After verification of the documents, it was found by the team that the land of the assessee was sold on 13/08/2008 which was registered by Sub-Registrar, Sanganer-II, Jaipur on 13/08/2008 at Rs. 73,40,000/-. Notices were issued to the assessee which were duly served upon him. The A.O. completed the assessment determining the total income of assessee at Rs. 1,64,75,408/- by making additions/disallowances.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the details of the case, given part relief to the assessee. Against the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT by taking the above mentioned grounds of appeal.

5. During the course of hearing, the Bench noticed that the assessee has filed additional evidence with regard to distance to distance of land sold from the municipal area and the affidavit of the assessee affirming the fact that the agricultural land is situated beyond 8 KM of local limit of Jaipur municipality on Sikar Road. The Id AR has also drawn our attention towards the written submissions filed before the Bench regarding admission of additional evidence and the same is reproduced below:

"The Humble assessee appellant respectfully prays for taking additional documents on records in the captioned appeal and would like to submit that:

That the assessee appellant has filed an Income- tax appeal before income Tax appellate Tribunal, Jaipur Bench, Jaipur for the assessment year 2009-10 against the order passed by the Id. Commissioner of Income Tax (Appeals)-Jodhpur. The sole issue involved in the appeal relates to, whether the agriculture land sold by the appellant is capital asset or otherwise.

That both the lower authorities, rejected the contention of the appellant by solely relying on the distance report of the Tehsildar, Amer who certified the distance of area in which land is situated to be 7 km's from local limits of Jaipur municipality. However, the same is contrary to ground realities.

Thus, the appellant prays for admission of following additional evidences, which are genuine & goes to root of the matter, namely:-

- 1. Certificate from Sub-Tehsildar, Rampura Dabri dated 05.11.2018 confirming the distance of agriculture land to*

be 9 km's from the local limit of Jaipur Municipality on Sikar road i.e. Nindar Mod.

2 Affidavit from the assessee appellant that the area in which impugned agriculture land is situated is beyond 8 km's of local limit of Jaipur Municipality on Sikar Road i.e. Nindar Mod.

The omission to furnish the evidence at S.No. 1 before lower authorities was beyond the control of the appellant, inasmuch, the certificate was awaited from Sub- Tehsildar at the time of appeal hearing before Worthy CIT(A), Jodhpur.

It is therefore, humbly prayed, that the additional documents/evidence filed before your honours may kindly be allowed to be taken on record as the same goes to the root of matter and is duly covered under Rule 29 of Income-tax Appellate Tribunal Rules, 1963 and oblige."

6. On the other hand, the Id DR has relied on the orders of the lower authorities and submitted that the additional evidence relied by the assessee has no evidentiary value and appeal of the assessee may be dismissed.

7. We have considered the rival contentions and carefully perused the orders of the revenue authorities. We also have carefully examined the additional evidences submitted by the assessee in the form of certificate from Sub-Tehsildar, Rampura Dabri dated 05.11.2018 and affidavit from the assessee that the area in which impugned agriculture land is situated is beyond 8 km's of local limit of Jaipur Municipality on

Sikar Road i.e. Nindar Mod. Considering the certificate of Sub-Tehsildar mentioning the fact that village Burthal, khata Nos. 824, 825, 831, 832, 833, 834, 824/1263, 834/1266 and 853, in the year 1994, are situated at 9 KM of gram Nindar as well as affidavit filed by the assessee mentioning that fact that the road distance of the village Bhurthal i.e. area in which land is situated is nearly 10.9 KMs from the local limit of Jaipur municipality on Sikar Road i.e. Nindar Mod as was existing on 06/01/1994 i.e. date of publication of notification No. 9447 in the official gazette. In view of the above facts and circumstances, we admit the documents placed on record by the assessee as additional evidences. Once, we have admitted the additional evidence, therefore, the matter is remanded back to the A.O. for the deciding the issue afresh after verifying the documents so placed before us as additional evidences.

8. In this result, this appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22nd February, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 22/02/2021

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

***Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Ramkishore Mali (Saini), Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-7(4), 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. 1416/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar