

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

श्री संदीप गोसाईं, 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. 35/JP/2019
निर्धारण वर्ष / Assessment Year :2012-13

Shri Dharamvir Singh, S/o- Shri Inder Singh, 523, Near Gurudwara, Bhimganjmandi, Kota Jn., Kota.	बनाम Vs.	I.T.O. Ward 2(1) Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXOPS 4086 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 16/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 12/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Kota dated 27/11/2018 for the A.Y. 2012-13 in the matter of order passed U/s 143(3)/147 of the Income Tax Act, 1961 (in short, the Act). In this appeal, the assessee has raised sole ground of appeal which is against the order of the Id. CIT(A) in confirming the addition of Rs. 16,89,423/-.

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

3. As per the facts of the present case, the assessee derived income from house property, capital gain and interest. He filed his return of income on 14/06/2012 declaring total income of Rs. 1,73,050/-. The assessment was completed U/s 143(3)/147 of the Act on 29/09/2017 by assessing total income of assessee at Rs. 17,50,620/-.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A). However, the Id. CIT(A) after considering the case of both the parties, sustained the addition made by the A.O. Against the order of the Id. CIT(A), the assessee has preferred present appeal before the ITAT by taking the above mentioned sole ground of appeal.

5. The solitary ground raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 16,89,423/-. After having gone through the facts of the present case, we found that the A.O. made additions by disallowing improvement cost and making investment by the assessee in the purchase of residential house in the name of his wife. As per facts of the present case, during the year under consideration, the assessee sold an industrial plot of 750 Sq.Mt. for Rs.

11,25,000/- and received the entire payment in two installments i.e. Rs. 4,50,000/- on 16/11/2010 and Rs. 6,75,000/- on 08/12/2010. Both these amounts were received through cheques. The assessee also filed his ITA declaring total income of Rs. 1,73,050/- on 14/06/2012. However, the case of the assessee was selected for scrutiny and after providing opportunity of hearing, the A.O. treated the DLV value on the date of registration as full value of consideration, therefore, by applying the provisions of Section 50C of the Act, the additions were made in the case of assessee.

6. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the lower authorities and it was submitted by the Id AR that an agreement for sale of industrial plot was executed on 15/11/2010 for a total sale consideration of Rs. 11,25,000/-. However, the entire sale consideration was received through cheque in two installments i.e. Rs. 4,50,000/- on 16/11/2010 and Rs. 6,75,000/- on 08/12/2010 and the said amount was deposited in the bank account maintained by the assessee and consequently, possession of the property was handed over to the purchaser and in this way, entire transactions were completed. It was submitted that the registration of the plot in question took place in April, 2011 and at that time the DLC value per Sq.Mt. was increased from Rs. 1500/- to Rs. 2000/- per Sq.Mt.,

consequently, the A.O. applied increased DLC value while calculating the sale price of the plot in question. The Id AR has drawn our attention to the copy of sale deed which is at page No. 3 to 9 of the paper book which also reflects that the total sale consideration of Rs. 11,25,000/- was received by the assessee and the same is incorporated in the sale deed. The assessee has also drawn our attention to the bank statement which is placed at page No. 21 and 23 of the paper book which reflects that the entire sale consideration of Rs. 11,25,000/- was received in two installments dated 16/11/2010 and 08/12/2010. The Id AR has also placed on record the DLC rate chart for similar properties which were got registered during the relevant period and the same chart is annexed at page No. 75 of the paper book and the sale deeds of the similar properties are also placed on record at page Nos. 76 to 102 of the paper book. It was submitted by the Id AR that the Finance Bill, 2016 exclusively provides that the government has recognized the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale and introduced welcome amendments to the statute to take the remedial measures and the Coordinate Benches of the Tribunals as well as the Hon'ble High Court have categorical held that applicability of proviso to Section 50C of the Act should be treated as

curative in nature with retrospective effect w.e.f. 01/04/2003 i.e. the date from which Section 50C is introduced.

7. On the contrary, the Id DR has relied on the orders of the authorities below.

8. After deep appreciation of facts and considering the matter at length, we noticed that the factual position as explained by the assessee has not been disputed by the Id DR. the only dispute which has accrued before us is with regard to applicability of the proviso to Section 50C of the Act. According to the Id DR, since the amendment introduced only with prospective effect from 01/04/2017, therefore, the assessee is not entitled to taken benefit of the said proviso. On the contrary, the Coordinate Bench of the Ahmadabad Tribunal in the case of **Dharamshibhai Sonani Vs ACIT in ITA No. 1237/Ahd/2013 decision dated 30/09/2016** has categorically held that *proviso to Section 50C of the Act being curative in nature and thus could have been retrospective applicability*. The said decision has further been followed by another Coordinate Bench of ITAT Ahmedabad in the case of **Smt. Kundanben Ambalal Shah Vs ITO in ITA No. 3354/Ahd/2014 decision dated 30/11/2017** wherein also it has categorically been held that *"where the date of the agreement fixing the amount of*

consideration and the date of registration for the transfer of the capital asset are not the same, then in that eventuality, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value or consideration for such transfer and the said proviso was held to be retrospective in nature and effective w.e.f. 01/04/2003. The said proposition has also been upheld by the Hon'ble Delhi High Court in the case of **Ansal landmark Township Pvt. Ltd.** and the Hon'ble Supreme Court in the case of **Alom Extrusions Ltd.** wherein the Hon'ble Supreme Court observed that *when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the Section and which proviso is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole.* Therefore, while considering the proposition laid down by the Coordinate Benches of the Tribunal and also the Hon'ble High Court, we are of the view that the proviso to Section 50C of the Act is applicable in the case of assessee as the entire sale consideration was received by the assessee through cheque before execution of the registration of the sale deed, therefore, the amount received by the assessee at the time of entered into an agreement has to

be taken for the purpose of computing full value of consideration for such transfer.

9. From perusal of the record, we also observed that the assessee as placed on record a chart which is at page No. 75 of the paper book which contains that similar situated properties were registered and the DLC value was taken at Rs. 1500 per sq.mt. which was registered up to 11/04/2011 and office order from the office of Sr. Regional Manager, RIICO Ltd. Kota dated 09/02/2011 has also been placed on record which shows that the rates of Indraprastha Industrial Area, Kota were revised from Rs. 1500 per sq.mt to Rs. 2000/- per sq. mt. vide office order dated 09/02/2011 and since admittedly, the agreement to sell was entered into between the parties with regard to sale of the property on 15/11/2010 and the entire sale consideration was paid in two installments on 16/11/2010 and 08/12/2010, however, the registered sale deed could be got executed on 20/04/2011 at that time, revised rates had come into operation but because of our detailed reasoning above by applying proviso to Section 50C of the Act, the rates prevalent at the time of agreement i.e. 15/11/2010 could be applicable in the present case for the purpose of computing full value of consideration for such transfer.

10. The A.O. has also made disallowance of improvement cost and making investment of the entire consideration in the new residential house as a new residential house was purchased by the assessee in the name of his wife. In this respect, the Id AR has reiterated the same arguments as were raised before the Id. CIT(A) and has placed on record a copy of agreement of plot purchased in his wife's name which is placed at page No. 19 to 20, ITR computation and balance sheet which is placed at page No. 24 to 29 of the paper book, water and electricity of house, which is at page No. 31-33 of the paper book, engineer's valuation report for cost of construction, which is placed at page No. 67-74 of the paper book. After hearing the parties at length on the issue of both the disallowances, we found that in order to prove the improvement cost, the assessee has placed engineer's valuation report for cost of construction which has not been rebutted by the lower authorities and no fault has been found in the said report. Moreover, as per provisions of Section 54F of the Act, it has already been held by the Coordinate Bench of this Tribunal in the case of **Mahadev Balai Vs ITO in ITA No. 333/JP/2016 decided on 26/12/2016** and held that there is no impediment in the assessee's claim for relief U/s 54F of the Act as the assessee had purchased the property in the name of his wife. Further the Coordinate Bench of ITAT, Chandigarh Benches in the case of **ACIT Vs**

Smt. Sunita Sharma in ITA No. 1156/Chd/2012 decision dated 18/01/2013 has also upheld the said proposition and in the case of **Shri Rajkumar Mandhani Vs DCIT in ITA No. 835/Hyd/2017** decision dated 20/11/2018, it has been held by the Bench that *object of granting exemption U/s 54F of the Act, is that the house should have been purchased for residential purposes, must be given exemption so far as capital gains are concerned that the work "assessee" must be given a wide and liberal interpretation so as to include his legal heirs also and there is no warrant for giving too strict interpretation on the word "assessee" as that would frustrate the object of granting the exemption.*

In the present case, the assessee had purchased house in the name of his wife, therefore, the Coordinate Bench has held that the assessee is not disentitled for exemption U/s 54F of the Act and the said proposition has further been upheld by the coordinate bench of this Tribunal in the case of **Shri Vivek Jain vs DCIT in ITA No. 139/JP?2016 decision dated 08/12/2017** wherein the assessee was found eligible for deduction U/s 54F of the Act in respect of residential house property purchased in the name of his wife. Since the factual position in this case is not in dispute, therefore, while applying the principles laid down by the Coordinate Benches as above and also respectfully following the decision of Hon'ble Rajasthan High Court in the case of **Sh. Mahadev Balai Vs**

ITO in D.B. ITA No. 136/2017 decision dated 07/11/2017 we also hold that the assessee is eligible for deduction U/s 54F of the Act in respect of residential house property purchased in the name of his wife. Considering the totality of facts and circumstances of the case, we direct to delete the addition so made and confirmed qua this issue.

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

Order pronounced in the open court on 12th March, 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:- 12/03/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Dharamvir Singh, Kota.
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward 2(1) Kota.
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. 35/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar