

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 06/JP/2018  
निर्धारण वर्ष/Assessment Years : 2013-14

Smt. Laxmi Devi Verma Plot No. 110, Green Park Vihar, Benad Road, Dadi Ka Phatak, Jaipur.	बनाम Vs.	The ITO, Ward-3(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADXPV 5497 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vedant Agarwal (Adv.) &  
Sh. Satish Kumar Gupta (CA)  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/03/2021  
उदघोषणा की तारीख / Date of Pronouncement : 04/05/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-I, Jaipur dated 06.11.2017 for the assessment year 2013-14.

2. Briefly, the facts of the case are that during the year under consideration, the assessee has sold an immovable property situated at Tehsil Chomu, Jaipur for a consideration of Rs. 94,20,000/- on 24.12.2012 which was valued at Rs. 95,13,000/- by the Sub-Registrar

for the purpose of charging stamp duty but the transaction of sale of above property was not disclosed in the return of income. In the enquiries conducted by the office of DIT(I&CI), Rajasthan, Jaipur, the assessee has submitted a computation of income showing long term capital gains on the sale of said property at Rs. Nil taking sale consideration at Rs. 94,20,000/-, cost of acquisition of Rs 14,63,918/-, registry expenses of Rs 1,83,136/-, expenses on account of commission and development expenses amounting to Rs 25,28,324/-and claiming deduction of Rs. 48,94,622/- u/s 54F of the Act. Further, it has been stated by the AO that spot enquiries were made by the ITI from the office of DIT (I & CI), Rajasthan, Jaipur on 01.03.2015 wherein it was observed that the plots of land purchased by the appellant at Tehsil Chornu were lying vacant and not even a boundary wall was there. In view of the report of the DIT(I & CI), Rajasthan , Jaipur the matter was examined by the AO and he had reason to believe that capital gain on the sale of property for Rs. 95,13,000/- had escaped assessment as the total amount of Rs. 98,92,590/- was invested by the appellant in the purchase of two plots but no house was constructed thereon and consequently, deduction u/s 54F of the Act was not allowable. Thereafter, notice U/s 148 of the Act was issued on 18.01.2016 after seeking approval of the competent authority. Thereafter notice U/s 143(2) and 142(1) of the Act were issued calling for the information/documents and the assessment was completed U/s 147 r/w section 143(3) of the Act vide order dated 23.12.2016 wherein income from long term capital gains was computed without allowing deduction towards commission and development expenses totalling

Rs. 25,28,324/- claimed by the assessee and further deduction U/s 54F of the Act was also denied as the assessee had not made investment in house property and the amount of Rs. 98,52,590/- was invested in vacated residential plot of land only. Against the said findings, the assessee's went in appeal before the Id. CIT(A) who has confirmed the order of the Assessing Officer and again the said findings, the assessee's is now in appeal before us.

3. During the course of hearing, the Id. AR submitted that during the appellate proceedings before the Id CIT(A), the assessee had moved an application under Rule 46A for admission of certain additional evidences which are critical and germane to issue under consideration, however the Id. CIT(A) has erred in not accepting the additional evidences filed by the assessee. It was submitted that the assessee has taken a specific ground of appeal before this Bench regarding non-admission of additional evidences by the Id CIT(A) besides other grounds of appeal and it was accordingly prayed that the additional evidences so filed by the assessee may be admitted and the matter may be remanded back to the file of the Assessing Officer to examine the same.

4. It was submitted by the Id AR that the Assessing Officer has mentioned in the assessment order that on 20.12.2016 being the scheduled date of hearing, the assessee did not produce any documents as required and did not produce the persons to whom the commission was paid. In this regard, it was submitted that the assessee along with her AR, Shri Anil Kumar Agarwal, C.A., Shri

Ramesh Kumar, her husband and Shri Majid Khan duly appeared before the AO along with documents as evident from the copy of visitor pass issued in name of Shri Ramesh Kumar by the Income Tax Office dated 20.12.2016 as well as notings in the ordersheet by the AO but the Assessing Officer did not accept the same for the reason that they have not come at the given time i.e. time given before lunch. It was accordingly submitted that it is a case where the Assessing Officer has refused to admit the evidences which ought to have been admitted and the assessee was thus prevented by sufficient cause from producing the evidences which are germane to the issue under consideration. It was accordingly submitted that in the interest of justice, the additional evidence may be admitted and the matter may be remanded back to the AO for necessary examination.

5. Per contra, the Id. DR drawn our reference to the findings of the Id. CIT(A) and it was submitted that the Id. CIT(A) has taken note of the fact that the Assessing Officer has provided sufficient opportunities to the assessee from time to time. It was further submitted that it is not disputed that the assessee appeared before the Assessing Officer on 20.12.2016, however the fact that they have reached the office at around 5.30 pm, the time reflected on the visiting pass itself shows that the assessee did not want to give any time to the Assessing Officer for any fruitful examination of these persons for verification. It was further submitted that even in the notings in the order sheet dated 20.12.2016 wherein the assessee has put her signature, the assessee has not stated that the

AO did not take on record the evidences sought to be filed by him and Shri Majid Khan along with the assessee were produced for necessary examination. It was accordingly submitted that the case of the assessee does not come within the purview of Rule 46A and therefore, there is no infirmity in the findings of the Id. CIT(A) who has rightly refused to admit the additional evidences sought to be filed by the assessee.

6. We have heard the rival contentions and perused the material available on record. The evidences so sought to be admitted are admittedly related to the transaction which is subjected to long term capital gains and are in form of bills, receipts, confirmation, affidavits etc in support of commission and development expenses and claim of construction of house and deduction u/s 54F of the Act. It is a settled position of law that the Revenue can tax what is taxable under the law and the deductions where claimed and found eligible should be allowed. The substantial justice should prevail over the procedural or technical aspects. We therefore considering the fact that these evidences which are now sought to be admitted would be in the interest of proper adjudication of the issues at hand, the same are hereby admitted and the matter is set-aside to the file of AO to examine the same and decide the matter as per law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 04/05/2021.

Sd/-

( संदीप गोसाई )  
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/05/2021.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Smt. Laxmi Devi Verma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(3), 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. 06/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar