

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(through web-based video conferencing platform)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No. 440/Ind/2019

निर्धारण वर्ष/ Assessment Year : 2010-11

Smt. Kalpana Jain, 99, Mahaveer Nagar, Kanadia Road, Indore, Madhya Pradesh PAN : ABRPJ 9970 A	Vs	Income Tax Officer-1(4), Indore, Madhya Pradesh
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.V. Deshpande, AR
Revenue by :		Shri Amit Kumar Soni, Sr DR

ITA No. 663/Ind/2019

निर्धारण वर्ष/ Assessment Year : 2010-11

Smt. Chandrakanta Jain, 100, Mahaveer Nagar, Indore PAN : ABAPJ 3077 H	Vs	Income Tax Officer Ward -1(4), Indore,
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		None
Revenue by :		Shri Amit Kumar Soni, Sr DR

सुनवाई की तारीख/Date of Hearing : 08/11/2021
घोषणा की तारीख /Date of Pronouncement: 15 /11/2021

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present two appeals are directed at the instance of two assessees against the separate orders of the learned Commissioner of Income-Tax (Appeals)-I, Indore passed on 25th February, 2019 in the case of Smt.

Kalpana Jain and 20th February, 2019 in the case of Smt. Chandrakanta Jain, both for Assessment Year 2010-11.

2. The short question involved in both the appeals relates to determination of capital gain, if any, arisen to both the assesseees on sale of immovable property at Talawali Chanda, Indore.

3. With the assistance of learned representatives, we have gone through the record carefully. It emerges out from the record that the Assessing Officer got information through AIR, i.e. Annual Information Report, exhibiting the fact that 21 persons had sold an immovable property at Talawali Chanda, Indore. He, therefore, issued notice under Section 148 of the Act in the case of Smt. Kalpana Jain. According to the Assessing Officer, the consideration has been shown at Rs.30,00,000/- in the sale deed registered on 21.10.2009, whereas the property was assessed by the Sub-Registrar for the purpose of Stamp Duty at Rs.1,31,00,000/-. Hence, according to the Assessing Officer, the sale consideration for the purpose of Long Term Capital Gain under Section 48 of the Act is to be deemed equivalent to the consideration on which stamp duty was paid as contemplated in Section 50C of the Income-tax Act. Accordingly, he reopened the assessment in both the cases.

4. The case of assessee Smt. Chandrakanta Jain was that the property was sold in FY 2007-08 to M/s. Sarthak Innovations Pvt Ltd. The sale deed was presented on 27.11.2007, but the Sub-Registrar did not register the sale deed and ultimately, after completion of lot of formalities, the sale deed was got registered on 21.10.2009. The stand of the assesseees is that the capital

gain, if any, deserves to be assessed in Assessment Year 2008-09 and not in Assessment Year 2010-11.

5. Appeal to the learned CIT(A) did not bring any relief to the assesseees.

6. Shri S.V. Deshpande, learned Counsel for the assessee, took us through the copy of the sale deed available in the paper-book and apprised us that this sale deed was presented before the Sub-Registrar on 27.11.2007. He drew our attention towards page Nos. 8-10 of the paper-book where the stamp from the Sub-Registrar Office exhibiting the presentation of the sale deed on 27.11.2007 is available. Shri Deshpande also read over the relevant part of the sale deed - particularly on page no. 28 of the paper-book - wherein it has been mentioned that the vendors have received the complete sale consideration and also handed over the vacant possession of the land. Thus, as per the definition of "transfer" provided in sub-clause (v) of Section 2(47) of the Act, if possession is being given in lieu of consideration, then for the purpose of Income-Tax it is to be assumed as "transfer". Considering the above facts, we are satisfied that the transaction was completed on 27.11.2007 when the sale deed was presented for registration before the Sub-Registrar on completion of all the formalities and after handing over the possession. It could not be registered on account of some technicalities at the end of Sub-Registrar, but for the purpose of income-tax, the transaction stands completed. Therefore, the capital gain, if any, arose to the assesseees ought to have been assessed in Assessment Year 2008-09 and not in the Assessment Year 2010-11. This fact was duly brought to the notice of the Assessing Officer by the assessee Smt. Kalpana Jain. Smt. Chandrakanta Jain is also one of the vendors, though not represented by any Counsel; but the facts are identical. Therefore, we allow both the appeals and delete the

4

additions made by the Assessing Officer and confirmed by the learned CIT(A).

7. In the result, both the appeals of the assessee(s) are allowed.

Pronounced on 15.11.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated 15 /11/2021

Dr

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

Sd/-

(RAJPAL YADAV)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Indore