

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. 317/JP/2019
निर्धारण वर्ष / Assessment Year :2012-13

Hanuman Sahay Jat, M/s Thakur Gupta & Associates, 29, Sangram Colony, C-Scheme, Jaipur-302001.	बनाम Vs.	I.T.O., Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APHPJ 8018 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Jain (CA)
& Shri Vikram Gr. Gupta (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 25/11/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jodhpur (Camp at Jaipur) dated 19/12/2018 for the A.Y. 2012-13 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- "1. The Ld. CIT has erred on facts and circumstances in confirming addition made by AO of Rs. 6197375/- of capital receipt under the head business for the sale of agricultural land duly recorded in revenue record situated beyond 8 KM from Jaipur Nagar Nigam not being a capital asset in terms of Sec. 2(14) and not liable for Tax and nothing has been done on the said land for conversion of its use which fall in the nature of trade.

- 1.1 *The Ld. AO has erred in treating the sale of agricultural land in parts alleging the assessee to have sold the land after plotting ignoring the facts of sale of agricultural land in hectare terms duly recorded registered document and revenue records and sale of land as agriculture land as and where basis.*
- 1.2 *The Ld. AO has erred in placing reliance merely on the basis of Inspector report of jurisdictional inspector after a period of more than 3.5 years of sale in which the plots were found at the time of inspection in treating the sale of agricultural land under the head business.*
- 1.3 *The Ld. AO has otherwise also erred in treating the cost of acquisition of sold out 1.11 hectare agricultural land in his own assumption and presumption of the ancestral land acquired by the assessee @1250/- per bigha for aggregating value of Rs. 2625/- despite of having knowledge and available information of the similar size land 1.11 hectare agricultural land from same khasra, was acquired by government in the year 2005 and the compensation was awarded in the year 2009 for the same for Rs. 9324000/- at reserve price by way of allotment of residential and commercial properties in lieu of compensation vide allotment letter No. 8349 dated 09.11.2009.*
- 1.4 *The Ld. AO has erred in casting obligation on the assessee for maintenance of books of accounts u/s 44AA and getting the audited u/s 44AB for the sale of agricultural land situated beyond 8KM from Jaipur Nagar Nigam on which no business activities were carried out by assessee."*

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

3. At the very outset, we noticed that an application dated 27th August, 2021, marked as Annexure-1, has been filed by the assessee for furnishing of additional evidence in the form of affidavits from buyers of agriculture land. In this application, the assessee has stated that the additional

evidences in the form of affidavits from buyers of agricultural land are necessary for adjudication of the matter as no enquiries from the buyers of agriculture land as to who made the development/boundary wall on the agriculture land was made by either the A.O. of the Id. CIT(A) at the time of adjudication of the matter and the assessment has been completed with the presumption of development/boundary wall being made by the assessee based on report of the Inspector and Tehsildar who inspected the property after more than three years of sale and which are also contradictory to each other. Therefore, the Id. AR requested to admit the additional evidences in the form of affidavits and the matter may be restored to the file of the A.O. for deciding the appeal on the basis of additional evidences and merits.

4. On the other hand, the Id. DR has raised objection to the admission of the additional evidences and also relied upon the orders passed by the Revenue authorities.

5. Having considered the rival contentions and carefully perused the material available on record. From perusal of record, we observed that Section 254 of the Act read with Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 states about power to admit additional evidences, whether mere fact that evidence sought to be produced is vital and important does not provide a substantial cause to allow its admission at

appellate stage, especially when evidence was available to party at initial state and had not been produced at that time. Rule 46A of the Rules speaks about production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)]. The additional evidences submitted by the assessee at this stage are the first time and are necessary for deciding the appeal. Moreover, in case, the additional evidence so placed on record by the assessee is allowed then in that eventuality, no prejudice shall be caused to the rights of the Revenue. Whereas on the contrary, in case, the said additional evidences placed on record by the assessee is not considered then in that eventuality the rights of the assessee shall be prejudiced. The additional evidences submitted by the assessee at this stage are the first time and are necessary for deciding the appeal, therefore, considering the totality of facts and circumstances of the case as well as law prevailing in this regard, we admit the additional evidences filed by the assessee.

6. Since, we have allowed the application of assessee by admitting the documents as additional evidences, therefore, in these circumstances, it has become although necessary to restore the present appeal to the file of the A.O. to verify the affidavits filed by the assessee. Therefore, considering the totality of the facts and circumstances of the case, we restore the mater back to the file of the A.O. for deciding the issue afresh after careful

examination of the additional evidences filed in the form of affidavits by the assessee from the buyers of the agricultural land as well as after making due verification/inquiry from the buyers of agriculture land as to who made the development/boundary wall on the agriculture land. Reasonable opportunity of hearing be provided to the assessee before deciding the issue in accordance with law. We order accordingly.

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

Order pronounced in the open court on 25th November, 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:-25/11/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Hanuman Sahay Jat, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-7(2), Ajmer.
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. 317/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar